

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA * Case No. 17-CR-00281 (ERK)
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 *
 * Brooklyn, New York
 * January 12, 2018
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CARLOS RICHARD MARTINEZ, *
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 * Defendant.
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TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE EDWARD R. KORMAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 (Proceedings commenced at 10:23 a.m.)

2 THE CLERK: All rise.

3 (Jury enters courtroom.)

4 THE CLERK: Please be seated.

5 MS. SHIHATA: Your Honor, the government calls

6 Danilda Lora Osoria.

7 D A N I L D A L O R A O S O R I A ,

8 called as a witness, having been first duly sworn, was

9 examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. SHIHATA:

12 Q Good morning.

13 A Good morning.

14 Q Can you see me over here?

15 A Yes.

16 Q Now what is your name?

17 A Danilda Osoria.

18 Q Okay. And do you have another middle name, as well?

19 A Lora.

20 Q So is your full name Danilda Lora Osoria?

21 A Yes.

22 Q And you're testifying here in Spanish, correct?

23 A Yes.

24 Q So you speak, read and understand English?

25 A Yes.

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1 Q Is English your second language?

2 A Yes.

3 Q Are you more comfortable testifying here in court in
4 Spanish?

5 A Yes.

6 Q How old are you?

7 A 36.

8 Q And do you go by any nicknames?

9 A "Nani."

10 Q Where were you born?

11 A The Dominican Republic.

12 Q Are you nervous to be here today?

13 A Yes.

14 Q Do you want to be here today?

15 A Yes.

16 Q You do want to be here?

17 A Yes.

18 Q Okay. And when did you move to the United States?

19 A In 1988.

20 Q And how old were you at the time?

21 A Between seven and eight.

22 Q And when you came to the U.S., did you come here legally?

23 A Yes.

24 Q Did you have what's known as a green card?

25 A Yes.

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- 1 Q How far did you go in school?
- 2 A 11th or 12th grade.
- 3 Q And why did you stop going to school?
- 4 A Because I got pregnant.
- 5 Q How many children do you have?
- 6 A Two.
- 7 Q And how old are they?
- 8 A 20 and 12.
- 9 Q After you stopped going to school, did you get a job?
- 10 A Yes.
- 11 Q What did you do for work?
- 12 A I worked as a sales person at a store and then I took care
- 13 of elderly, disabled people.
- 14 Q Is that known as being a home health aide?
- 15 A Yes.
- 16 Q And around when did you start working as a home health
- 17 aide?
- 18 A In November of 2006 -- no, sorry, August of 2006.
- 19 Q And how long did you do that for?
- 20 A Until the day when -- until April of 2014.
- 21 Q Now directing your attention to June 28th, 2012, were you
- 22 arrested that day?
- 23 A Yes.
- 24 Q And what charge were you arrested for?
- 25 A Conspiracy.

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1 Q Drug conspiracy?

2 A Yes.

3 Q Had you ever been arrested before?

4 A No.

5 Q Following your arrest, were you released on bail?

6 A Yes.

7 Q And did you continue to work as a home health aide while
8 you were out on bail?

9 A Yes.

10 Q Directing your attention to August 1st, 2012, did you
11 plead guilty to a crime?

12 A Yes.

13 Q What did you plead guilty to?

14 A Attempt to distribute narcotic substances.

15 Q And did you plead guilty to a conspiracy charge about
16 distributing narcotics?

17 A Yes, yes.

18 Q And were you sentenced to prison time in connection with
19 that guilty plea?

20 A Yes.

21 Q What sentence did you receive?

22 A 27 months.

23 Q Now did you serve a full 27 months in jail?

24 A No.

25 Q How long did you serve in prison?

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1 A 23-and-a-half months.

2 Q And why was that?

3 A Because they take off good time from your sentence.

4 Q Is that how it works in the federal system?

5 A As far as I know it does, yes.

6 Q What was the most important thing to you while you were in
7 prison?

8 A My release date and my daughters.

9 Q When did you start serving your prison sentence?

10 A April 30th, 2014.

11 Q And what federal prison did you surrender to at that time?

12 A To the Metropolitan Center in Brooklyn.

13 Q Is that also known as the MDC?

14 A Yes.

15 Q And did you serve your entire sentence at the MDC?

16 A Yes.

17 Q When were you released or when did you leave the MDC?

18 A March 18th, 2016.

19 Q I'm showing you -- I'm showing everyone what's in evidence
20 as Government's Exhibit 4. Do you recognize this photo?

21 A Yes.

22 Q Who is this a photo of?

23 A Me.

24 Q And is this a photo of you that was taken while you were
25 in prison?

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1 A Yes.

2 Q Now to your knowledge, how many buildings does the MDC
3 have?

4 A As far as I know, I think two.

5 Q And when you were housed at the MDC, how many units were
6 there that housed female inmates?

7 A Two.

8 Q And were they referred to as 6-North and 6-South?

9 A Yes.

10 Q And what floor was each of these units on?

11 A On the sixth.

12 Q And was there any difference between those two units?

13 A Yes.

14 Q And to your knowledge, what was the difference?

15 A One was for women who had been sentenced and the other
16 ones were pretrial, waiting to be sentenced.

17 Q And what unit were you housed in?

18 A 6-South.

19 Q And that's the unit for sentenced prisoners?

20 A Yes.

21 Q Can you describe generally for the jury what the layout of
22 6-South was?

23 A Okay. You go in, so to the left is the recreation room.
24 The unit is to the right. So you go in and then to the right
25 are the telephones and the computers where you can send emails.

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1 The kitchen is to the left, followed by the officer's office.
2 And then after that, the showers. Then to the right of the
3 telephones are all of the rows where the beds are. And in the
4 middle, there are tables that you can sit at to watch
5 television. There are four TVs in the middle. There are two
6 rooms in the back, one where you can go to pray and the other
7 one you can go into to watch TV without headphones.

8 Q And --

9 A And that's it.

10 Q Okay, thank you. And you mentioned a recreation area, is
11 that in the unit itself or on the other side of the hallway?

12 A So as you walk across the unit, the recreation room where
13 you do exercise, that's there. And then the recreation place
14 where you sit down to watch television, that's there.

15 Q Okay. Now when you were housed at the MDC, did you have a
16 job?

17 A Yes.

18 Q And what job did you have?

19 A I worked in the kitchen.

20 Q And what did that mean?

21 A Our job was to prepare meals for the entire jail, for
22 everybody in the jail.

23 Q And what -- as a general matter, what time would you go to
24 work to do that job?

25 A At 11:30.

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1 Q And what time would you work until approximately?

2 A It would depend on what time we finished; 2, 3, 5, 6 in
3 the morning.

4 Q And was this job in the kitchen, was that in the same
5 building you were housed in or a different building?

6 A In a different building.

7 Q And how did you get this job in the kitchen?

8 A It's mandatory. When you're serving your sentence, you
9 get assigned a job.

10 Q Now did most of the sentenced prisoners in your unit have
11 a job?

12 A Yes.

13 Q When you were at the MDC, what were the other kinds of
14 jobs that female inmates in your unit had?

15 A There were inmates who did tutoring. They acted as
16 teachers. They taught classes. There were also inmates who
17 taught knitting.

18 THE COURT: Do we have to go over -- so far
19 everything that's she testified to has been largely repetitive
20 of what we have heard.

21 MS. SHIHATA: I'm almost done with this part, Judge.

22 THE COURT: Go ahead.

23 Q What were the other jobs?

24 A They taught recreation, they played basketball, they --
25 there were yoga classes.

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1 Q Were certain people assigned to cleaning and laundry?

2 A That too. Uh-huh.

3 Q Could visitors -- inmates have visitors at the MDC?

4 A Yes.

5 Q What days of the week?

6 A Wednesdays, Saturdays and Sundays.

7 Q What were the visiting -- did you have visits at the MDC?

8 A Yes.

9 Q What were the visiting hours on Wednesdays?

10 A It was from 5:30 to 7 p.m.

11 Q And were those visits in the same building or a different
12 building?

13 A In the same one.

14 Q And what were the visiting hours on Saturday and Sunday?

15 A From 8:30 to 3 p.m.

16 Q And on Saturdays and Sundays were the visits in the same
17 building or a different building?

18 A In a different one.

19 Q Meaning a building different from the one you were housed
20 in, correct?

21 A Yes.

22 Q How did you get to and from the other building -- to the
23 other building?

24 A There was a long hallway that connected both buildings.

25 Q Now, did you -- you said you had visitors at the MDC?

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- 1 A Yes.
- 2 Q Generally speaking, what days did your visitors come?
- 3 A All three days.
- 4 Q And on Saturdays and Sundays around what time would your
- 5 visitors arrive?
- 6 A From 11:30 on.
- 7 Q How long did they stay?
- 8 A Until three.
- 9 Q Is that when the visiting time ended?
- 10 A Yes.
- 11 Q When you were at MDC who was in charge of the inmates?
- 12 A The officers.
- 13 Q I'm showing you what's in evidence as Government Exhibit
- 14 2. Do you recognize the person in this photograph?
- 15 A Yes.
- 16 Q I'm showing you what's in evidence as Government Exhibit
- 17 2-A. Is this the same photograph I just showed you with a name
- 18 written under it?
- 19 A Yes.
- 20 Q Is this the name you know this woman by?
- 21 A Yes.
- 22 Q Now, for the purposes of your testimony we're going to
- 23 refer to this woman in Government Exhibit 2 as "Maria", okay?
- 24 A Okay.
- 25 Q Where did you first meet Maria?

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1 A At the MDC in Brooklyn. At the MDC.

2 Q And did Maria arrive at the MDC before or after you?

3 A After.

4 Q And do you know where, if anywhere, she came from?

5 A She had come from the MCC in Manhattan.

6 Q Now, at some point after Maria arrived at the MDC did you
7 become friends with her?

8 A Yes.

9 Q And around when did you become friends with her?

10 A About three months later, two months later, something like
11 that.

12 Q When did she arrive at the MDC, to the best of your
13 recollection?

14 A April.

15 Q So would it be fair to say you became friends sometime in
16 the summer?

17 A Slightly before, yes.

18 Q Okay. Of what year?

19 A 2015.

20 Q And where was Maria from?

21 A The Dominican Republic.

22 Q And was her family still in the Dominican Republic?

23 A Yes.

24 Q Did Maria get visits at the MDC?

25 A No.

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1 Q How, if at all, did Maria keep in touch with her family?

2 A She would call them on the phone.

3 Q Were those phone calls important to her?

4 A Yes.

5 Q Was her family important to her?

6 A Yes.

7 Q Now, while you were at the MDC, did Maria have a job
8 cleaning?

9 A Yes.

10 Q And do you know what areas of the MDC she cleaned?

11 A She cleaned the second floor, the office -- the
12 lieutenant's floor.

13 Q Have you ever been to the second floor?

14 A Yes.

15 Q What areas have you been to there?

16 A To the doctor.

17 Q Have you ever been to the lieutenant's office?

18 A Yes.

19 Q Did you have any understanding of who Maria cleaned for at
20 the MDC?

21 A She cleaned for -- she cleaned the lieutenant's office.

22 Q Did she clean for lieutenants?

23 A Yes.

24 Q Do you know which lieutenants she cleaned for?

25 A Yes.

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1 Q Who?

2 A She cleaned for Lt. Martinez, she cleaned for Maldonado,
3 she cleaned for Perez and I don't know the other names, but
4 there were more.

5 Q Do you see Lt. Martinez in the courtroom here today?

6 A Yes.

7 Q Can you point him out by -- or can you identify him by an
8 item of clothing he's wearing.

9 A He has black glasses on.

10 MS. SHIHATA: Indicating the defendant, Your Honor.

11 THE COURT: Yes.

12 Q I'm showing you what's in evidence as Government Exhibit

13 1. Is that a photograph of Lt. Martinez?

14 A Yes.

15 Q Now, as an inmate at the MDC what, if any, understanding
16 did you have of what a lieutenant -- what the rank of
17 lieutenant was?

18 A They were responsible for the officers.

19 Q Were they above the officers?

20 A Yes.

21 Q And when, if at all, did you see lieutenants at the MDC?

22 A I saw the lieutenants very few times.

23 Q What would they be doing when you saw them?

24 A Well, they'd come and go into the office, some would walk
25 around the unit and then leave. That was it.

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1 Q Now, did -- when you said they would walk around the unit
2 and leave, would they be doing rounds?

3 A Yes.

4 Q And did you ever see Lt. Martinez doing rounds in your
5 unit?

6 A At the beginning very few times. I hardly ever saw him,
7 no.

8 Q Did that change at some point?

9 A Yes.

10 Q Can you explain?

11 A The time came when I would see him in the mornings all the
12 time.

13 Q And what was he doing?

14 A He was -- he was doing rounds. He was doing the count
15 with other officers.

16 Q Now, was there a point while you were at the MDC when you
17 noticed a change in Maria's demeanor?

18 A Yes.

19 Q And do you recall the month and the year that you noticed
20 that?

21 A The end of the year, November, December, sometime around
22 then of 2015.

23 Q Do you recall what day of the week it was?

24 A It was a weekend.

25 Q And why do you remember that it was a weekend?

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1 A Because that was when somebody else was there, another
2 inmate was going to get her visits back.

3 Q And did you have a visit that day?

4 A Yes.

5 Q And was it in the other building?

6 A Yes.

7 Q I'm showing you what's in evidence as Government Exhibit
8 5. Do you recognize the person in this photo?

9 A Yes.

10 Q Who is it?

11 A Melva Vasquez.

12 Q Now, a moment ago in your testimony you mentioned that
13 there was an inmate who had her visits reinstated; is that
14 correct?

15 A Yes.

16 Q And that was something you remembered about the day we
17 were discussing, correct?

18 A Yes.

19 Q Who was that inmate you were referring to?

20 A Melva.

21 Q Melva Vasquez?

22 A Yes.

23 Q And do you know -- when you first arrived at the MDC was
24 Melva Vasquez there?

25 A No.

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1 Q She arrived sometime after you?

2 A Yes.

3 Q And when Melva Vasquez first arrived, did she regularly
4 have visits?

5 A Yes.

6 Q And did that stop at some point?

7 A Yes.

8 Q And to your knowledge, how long did Melva Vasquez not have
9 visits for?

10 A For six months.

11 Q I'm showing you what's in evidence as Government Exhibit
12 6. Do you recognize the person in this photo?

13 A Yes.

14 Q And who do you recognize this to be?

15 A Kiara Maldonado.

16 Q And did you have a nickname for Kiara Maldonado?

17 A Yes.

18 Q What was the nickname?

19 A LaMenore.

20 Q And why did you call her LaMenore?

21 A Because she was the youngest of all of us.

22 Q About how old was she at the time?

23 A About 20, 21.

24 Q And did she arrive at the MDC before or after you?

25 A After.

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- 1 Q And did she stay long at the MDC?
- 2 A No.
- 3 Q About how long was she there?
- 4 A Something like four to five months.
- 5 Q I'm showing you what's in evidence as Government Exhibit
- 6 8. Do you recognize this person?
- 7 A Yes.
- 8 Q Who do you recognize it to be?
- 9 A Odis de la Cruz.
- 10 Q And where do you know Odis De La Cruz from?
- 11 A She was also another inmate at the MDC.
- 12 Q Now, on the day that we're talking about do you recall
- 13 whether Odie -- Odis De La Cruz had a visit?
- 14 A No.
- 15 Q No, you don't recall or no?
- 16 A No, I don't remember if she had a visit.
- 17 Q Did Maria have a visit that day?
- 18 A No.
- 19 Q Now, when you went for your visit that day, do you recall
- 20 if you went with Melva Vasquez or not, at the same time or not?
- 21 A No.
- 22 Q Sorry, just so I'm clear, no you don't recall or no you
- 23 didn't?
- 24 A We did not leave at the same time.
- 25 Q Okay. Who went first?

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1 A I did.

2 Q And did you return -- did you and Melva Vasquez return
3 from your visits at about the same time?

4 A Yes.

5 Q And around what time was that, if you recall?

6 A Between 3:10 and 3:20.

7 Q Now, are you familiar with a term "recall" at the -- the
8 term "recall" at the MDC?

9 A Yes.

10 Q And what is your understanding of what that term means?

11 A It's an announcement so women will all go to the areas of
12 their beds.

13 Q And are you familiar with the term "the count"?

14 A Yes.

15 Q And what does that mean?

16 A That's when officers go from bed to bed counting the
17 number of women in the unit.

18 Q Now, after you got back to your unit after the visit at
19 some point did you see Maria?

20 A Yes.

21 Q And did you speak to her?

22 A Yes.

23 Q Do you recall where you were when you spoke to her?

24 A I was in the area where my bed was.

25 Q And where was your bed at that time?

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- 1 A In row 15 bed three, the lower bed.
- 2 Q And what, if anything, did you observe about Maria when
- 3 you saw her after your visit?
- 4 A She was nervous, she was doing this, moving her hands like
- 5 this (indicating).
- 6 Q Okay. For the record you made a -- what looks like kind
- 7 of a fidgeting motion with your hands; is that correct?
- 8 A Yes.
- 9 Q Did you notice anything else?
- 10 A She was anxious, she wanted to talk to us. She wanted to
- 11 get something out. There was something in her that she wanted
- 12 to get out.
- 13 Q And when you said "she wanted to talk us," who is the us
- 14 you're referring to?
- 15 A With Melva, Kiara and with me.
- 16 Q And did you speak with her?
- 17 A Yes.
- 18 Q The way she appeared to you that morning had you ever seen
- 19 her like -- or sorry, the way she appeared to you that
- 20 afternoon had you ever seen her like that before?
- 21 A No.
- 22 Q What, if anything, did Maria say to you at that time?
- 23 A That Lt. Martinez had pen -- he had stuck it in her.
- 24 Q And what did you understand her -- stuck what in her?
- 25 A His penis.

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1 Q And is that what you understood her to mean?

2 A Yes.

3 Q Now, who else was present when Maria said that, to your
4 recollection?

5 A Melva, Kiara and me.

6 Q And did Maria say anything else about that?

7 A Right then she was scared she thought she could get
8 pregnant. She -- she was in shock. She never thought
9 something like that could have happened to her where she was.

10 Q Did she tell you anything about any physical reaction she
11 had had?

12 A Yes. Uh-huh.

13 Q What did she say?

14 A When she came up to the unit she was bleeding.

15 Q How did you initially react to what Maria told you?

16 A I didn't take it seriously. I didn't take it seriously
17 because I was more focused on being there, serving my sentence
18 and getting out.

19 Q At some point did you begin to take it more seriously?

20 A Yes.

21 Q And why was that?

22 A Because she was always nervous, she was talking about the
23 same thing. She was scared about her husband, of what might
24 happen to her. Because of what had happened to her, she was
25 afraid of that.

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1 Q Okay. On that day or that afternoon did you continue to
2 see her in the unit?

3 A Yes.

4 Q And what -- what, if anything, did you see her doing?

5 A So at one point after the count she went to her bed. Two
6 hours, one or two hours went by and then she just sat up in bed
7 crying. I looked at her and I still didn't think it was a big
8 thing. I thought she's being so dramatic. She's being so
9 dramatic, but I wasn't able to share, understand what she was
10 feeling until I saw how she was behaving.

11 Q She was crying?

12 A Yes.

13 Q And how, if at all, did Maria react to you not thinking it
14 was a big deal?

15 A She was really upset. She said, Nani, what's the matter
16 with you? Don't you have feelings? But that's the kind of
17 person I was. I was doing my time. You feel very alone in
18 that kind of a place. She was looking to me for support. I
19 didn't know how to give her that.

20 Q Now, after you saw Maria crying in her bed did you speak
21 to her again?

22 A Yes.

23 Q And do you recall where you were when you spoke to her
24 again?

25 A Yes.

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1 Q Where was that?

2 A She got out of her bed and she either came over to my bed
3 or went to the bathroom first, but she came over, yes.

4 Q And what did she look like at that point?

5 A She was crying. She came over to my bed sat down and
6 continued to cry.

7 Q Did she say anything else about what had happened to her
8 that day?

9 A She gave me details of what had happened that day. She
10 gave me details.

11 Q Did she say anything regarding Lt. Martinez's penis being
12 in her mouth?

13 A Yes, she -- yes.

14 Q What do you recall her saying about that?

15 A She came -- well, she was -- somebody came to the unit to
16 pick her up. She went downstairs and at one point she squatted
17 down, she crouched down to get the chemicals to clean with,
18 and as she was about to turn the lieutenant had his penis out.

19 Q Now, you -- you said Maria went to the bathroom at some
20 point; is that right, or you saw her go to the bathroom,
21 correct?

22 A Yes.

23 Q Back in the unit I'm talking about now.

24 A Yes.

25 Q And what happened when she went to the bathroom?

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1 A She called out to me from the bathroom, from there, so I
2 went over to see what she wanted. She asked me for a Kotex
3 pad. I went back to my bed and I went back to the bathroom to
4 bring it to her.

5 Q And did you give her a Kotex pad?

6 A Yes.

7 Q Is that also -- is that what's known as a sanitary napkin?

8 A Yes.

9 Q And what was your understanding of why she needed that?

10 A Earlier in the day when I had come back from my visit she
11 told me she was bleeding, but it wasn't because she was
12 menstruating, it was because of what had happened.

13 Q Did you see her again later that evening in the unit?

14 A Yes.

15 Q And how did she appear to you -- how did Maria appear to
16 you at that time?

17 A She was the same way, she never calmed down. She just
18 wanted to talk about that. She just wanted to get it all out.

19 Q Was she still crying?

20 A Yes.

21 Q You testified earlier that she was worried about getting
22 pregnant; is that correct?

23 A Yes.

24 Q Did she say anything about why she was worried about that?

25 A She was worried because she was in jail, because she was

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1 married. And because Lt. Martinez had told her he couldn't get
2 her pregnant at that point.

3 Q Was she worried because he ejaculated inside her?

4 A Yes.

5 Q And what, if anything, did she say Lt. Martinez would
6 bring her?

7 A The morning after pill.

8 Q Now, you testified earlier that you worked in food -- in
9 the kitchen, correct?

10 A Yes.

11 Q And on the day we're talking about here, did you have a
12 shift -- a kitchen shift that night?

13 A Yes.

14 Q And around what time did you leave for your shift that
15 night?

16 A Probably around 11:30, 11:40.

17 Q And did you also work the same -- until what time in the
18 morning, if you recall, approximately?

19 A Four or five in the morning.

20 Q And did you also work that same shift the following night?

21 A That was my shift all the time.

22 Q Okay. Now, on -- do you recall -- at some point after
23 Maria had told you that Lt. Martinez had stuck it in her, do
24 you recall returning from one of your kitchen shifts and Maria
25 showing you something?

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1 A Yes, you showed me the little packaging that the pill she
2 had taken had come in.

3 Q Okay. And do you remember whether -- how long after she
4 told you what happened this was? Do you understand my
5 question?

6 A No, could you repeat it. I don't know if you're talking
7 about the same day or the day after.

8 Q Okay. Let me rephrase the question.

9 A Okay.

10 Q Do you recall -- you said the day she told you, that night
11 you had a shift, a work shift at the kitchen, correct? Do
12 remember --

13 A Yes.

14 Q Sorry.

15 A Yes.

16 Q Do you remember if she told you when you returned from
17 your shift the next morning or some other time?

18 A The middle of the night.

19 Q Okay. And by middle of the night, do you mean early
20 morning hours when you return to the unit?

21 A Yes.

22 Q Now, what was the -- what was it again that Maria showed
23 you?

24 A The small packaging of the pill that she had taken.

25 Q And was the packaging empty when you saw it?

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1 A Yes.

2 Q And what, if anything, did Maria ask you to do when she
3 showed you the packaging?

4 A She asked me to verify whether or not that was the morning
5 after pill.

6 Q And why did she need you to verify that?

7 A Because she doesn't really speak or understand English.
8 Her reading and speaking ability of English is limited.

9 Q And were you able to read and understand English?

10 A Yes.

11 Q And did you read what was on the packaging she showed you?

12 A Yes, I read it. But I know it was the pill because I read
13 it.

14 Q So you confirmed it was the morning after pill?

15 A Yes.

16 Q And what, if anything, did you see Maria do with the
17 packaging after that?

18 A She threw it in the garbage.

19 Q Now, shortly after the events we've just discussed or that
20 you just testified about, did Melva Vasquez leave the MDC, did
21 she get released from the MDC?

22 A Yes.

23 Q And did Kiara Maldonado also leave the MDC shortly after
24 the events you've testified about?

25 A Yes.

Direct - Osoria - Shihata

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1 Q Did Maria continue to work cleaning the second floor
2 lieutenant's office area after that weekend, at the end of 2015
3 that you just testified about?

4 A Yes.

5 Q And did she do -- to your knowledge, did she do so for a
6 number of lieutenants, including Lt. Martinez?

7 A Yes.

8 Q Did you see her after she would clean for Lt. Martinez?

9 A Yes.

10 Q And did you see her sometimes before she would go clean
11 for Lt. Martinez?

12 A Yes.

13 Q And how did she appear to you?

14 A Uhm -- tired, like I'm tired of going downstairs.

15 Q Was she happy to go clean for him?

16 A No.

17 Q Was she upset?

18 A Yes.

19 Q Now, at the MDC, were you familiar with two inmates named
20 Latoya and Yesenia (ph.)?

21 A Yes.

22 Q And do you recall a time when they got into a -- when
23 those two inmates got into a fight on your unit?

24 A Yes.

25 Q Were you present in the unit that day when the fight was

Direct - Osoria - Shihata

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1 happening?

2 A Yes.

3 Q Did anyone get hurt?

4 A Yes.

5 Q And did anyone end up going to the hospital?

6 A Yes.

7 Q Do you recall, around when, this happened?

8 A January or February.

9 Q Of what year?

10 A 2016.

11 Q Now, at some point in this time frame, of around when this
12 fight between Latoya and Yesenia occurred, do you recall seeing
13 Lt. Martinez in Unit 6 South?

14 A Yes.

15 Q And around what time of day was it, if you recall?

16 A It was not during the day, it was at night that I saw him.

17 Q Around what time?

18 A It was like, 12:00 a.m going on 1:00 a.m -- it was between
19 12:00 and 1:00 in the morning.

20 Q And what were you doing at the time?

21 A Watching TV.

22 Q From where?

23 A From my bed.

24 Q And where did you first see Lt. Martinez?

25 A Going into the officer's office.

Direct - Osoria - Shihata

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1 Q Now, your bed, at -- in the -- in Unit 6 South at the
2 time, where was that again?

3 A It was the -- uh-um -- row 15, bed 3. The lower bunk.

4 Q I'm showing you what's in evidence as Government Exhibit
5 104-B. Is row 15, the row of beds next to the column that says
6 15 on it?

7 A Yes.

8 Q And when you were in your bed which direction did you
9 face?

10 A Towards -- toward the area where you can see the tables.

11 Q I'm showing you what's in evidence as Government Exhibit
12 104-C. Are those the tables you were just referring to?

13 A Yes.

14 Q Okay. And you said -- I'm sorry, you said you first saw
15 Lt. Martinez where?

16 A Going into the office.

17 Q Which office?

18 A The one to the right, the officer's office.

19 Q And looking at Government Exhibit 104-C, is that the
20 office directly in front of the ice machine?

21 A Yes.

22 Q And what, if anything, did you see next?

23 A The officer left the office and the lieutenant remained
24 inside. The officer went to get Odis De La Cruz from her bed
25 and then he --

Direct - Osoria - Shihata

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1 Q Let's just -- the witness we're referring to -- the
2 individual in Government Exhibit 2 is Maria. Okay?

3 A All right.

4 Q So first you saw an officer go get Odis De La Cruz; is
5 that correct?

6 A Yes.

7 Q And what did you see next?

8 A And then he went by Maria's bed and he got Maria too.

9 Q And what, if anything, did you see next?

10 A They went -- they went to his office -- the office and the
11 officer stayed outside.

12 Q Okay. Who -- who went -- sorry, when you say "the
13 office", are you again talking about the guard's office in
14 front of the ice machine?

15 A Yes.

16 Q And who, if anyone, went inside the office first?

17 A Odis De La Cruz went in first.

18 Q And do you recall how long she stayed there?

19 A Five minutes, maybe a bit less.

20 Q And what, if anything, did you see after Odis De La Cruz
21 left the office?

22 A Maria went after she left.

23 Q And do you recall about how long Maria was in the office
24 for?

25 A She was in there a bit longer than Odis De La Cruz.

Direct - Osoria - Shihata

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1 Q I'm showing you what's in evidence as Government Exhibit
2 9, do you recognize this person?

3 A Yes.

4 Q Who is this?

5 A Rodriguez.

6 Q And where do you know Rodriguez from?

7 A He's in charge of investigating things that happen in the
8 unit.

9 Q Was he an officer at the MDC?

10 A Yes.

11 Q Are you familiar with something called "SIS?"

12 A Yes.

13 Q And to your knowledge was Officer Rodriguez an SIS
14 Officer?

15 A Yes.

16 Q Now, at some point in the time frame of when you saw Lt.
17 Martinez come to the unit and what you just testified about
18 when you saw Odis De La Cruz and then Maria go into the guard's
19 office, in that time frame, did Maria tell you about a
20 conversation she had with Officer Rodriguez?

21 A Yes.

22 Q And what was her demeanor when she told you about that
23 conversation?

24 A She was scared and nervous.

25 Q Now -- and when she told you about her conversation with

Direct - Osoria - Shihata

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1 Officer Rodriguez, did she mention to you a phone call she had
2 made?

3 A Yes.

4 Q What phone call did she tell you about?

5 A She told me she had made a call. That she was talking
6 about things on the phone concerning Lt. Martinez. And that
7 why Rodriguez had called her, it was to question her.

8 Q Now, after you learned about that call from Maria, to your
9 knowledge did Maria stop going to the second floor -- to the
10 lieutenant's office for Lt. Martinez?

11 A Yes.

12 Q And when did you leave the MDC again?

13 A The 18th of March of 2016.

14 Q Now, I want to direct your attention to February 27, 2016.
15 Does that date have any meaning to you?

16 A Yes.

17 Q What meaning does it have to you?

18 A It's my birthday and it's also Dominican Independence Day.

19 Q Now, do you recall what day of the week it -- February
20 27th, your birthday was in 2016?

21 A It was -- uh-um -- Saturday or Sunday, one of those two
22 days.

23 Q And at some point the morning of your birthday, that year
24 in 2016, were you and Maria on the second floor in the
25 lieutenant's office area?

Direct - Osoria - Shihata

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1 A Yes.

2 Q And who, if anyone, took you to the second floor that
3 morning?

4 A Officer Nunez.

5 Q I'm showing you what's in evidence as Government Exhibit
6 7. Do you recognize this, the person in this photograph?

7 A Yes.

8 Q Who is this?

9 A Officer Nunez.

10 Q Now, why did Officer Nunez take you and Maria to the
11 lieutenant's office area on the second floor?

12 A Because that's where the -- uh-um -- chemicals are kept
13 that are used for cleaning.

14 Q And what, if any area, were you going to use those
15 cleaning chemicals to clean?

16 A The 5th floor, the education floor.

17 Q Is that the -- is the 5th floor the floor that Officer
18 Nunez worked on -- worked at?

19 A Yes.

20 Q At that time, what kind of officer was he, if you know?

21 A He was the one who provided you with equipment if you
22 wanted to do yoga, if you wanted like, exercise equipment you
23 would ask him for it.

24 Q Was he the recreation officer?

25 A Yes.

Direct - Osoria - Shihata

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1 Q Now, I'm showing you what's in evidence as Government
2 Exhibit 102-A. Is this the area that Officer Nunez took you
3 and Maria to that day?

4 A Yes.

5 Q And what, if anything, happened when you arrived to this
6 area?

7 A When we got to the area -- uh-um -- the door to the left
8 at the end is the lieutenant's office.

9 Q So just so the record's clear, is that the door in
10 Government Exhibit 102-A that has a little trash can in front
11 of it?

12 A Yes.

13 Q What happened next?

14 A I stayed outside, outside the door. And Maria and Officer
15 Nunez went into the office.

16 Q And you said you stayed outside. Were you able to see,
17 who, if anyone, was inside the office at that time?

18 A Well, yes, I could hear more people talking.

19 Q Who did -- well, who did you hear talking?

20 A I didn't know who was talking to Maria and Nunez but I
21 looked and I saw the lieutenant sitting there at the table.

22 Q Which lieutenant did you see?

23 A Martinez.

24 Q So you saw Lt. Martinez inside the lieutenant's office?

25 A Yes.

Direct - Osoria - Shihata

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1 Q And did you remain outside the office?

2 A Yes.

3 Q You said you could hear talking; is that right?

4 A Yes.

5 Q Could you hear what was being said?

6 A No.

7 Q At some point, did Officer Nunez leave the lieutenant's
8 office?

9 A Yes.

10 Q And did Maria stay inside with Lt. Martinez?

11 A Yes.

12 Q And while you were outside the office with Officer Nunez,
13 did the two of you have a conversation?

14 A Yes.

15 Q And about how long did that conversation last?

16 A Uh-um -- it was longer than five minutes. It was six,
17 seven, eight minutes. It was kinda long.

18 Q Okay. So something around, five to eight minutes, is that
19 fair to say?

20 A Yes.

21 Q At some point, did Officer Nunez go back inside the
22 lieutenant's office?

23 A Yes.

24 Q And what, if anything, happened next?

25 A After that, the officer and Maria came out of the office

Direct - Osoria - Shihata

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1 with the cleaning equipment and we went to the 5th floor.

2 Q And when you say, "we went to the 5th floor," who are you
3 referring to?

4 A Maria, Officer Nunez and myself.

5 Q Now, you testified earlier that you left the MDC on March
6 18, 2016; is that right?

7 A Yes.

8 Q And where did you go after you left the MDC?

9 A To immigration.

10 Q Were you in immigration custody?

11 A Yes.

12 Q Is that basically an immigration jail?

13 A Yes.

14 Q Did your federal conviction have an effect on your status
15 as a green card holder?

16 A Yes.

17 Q And were you put in what's called "removal" or
18 "deportation proceedings?"

19 A Yes.

20 Q And is that why you were in immigration custody?

21 A Yes.

22 Q Did you hire an immigration lawyer to help you with your
23 immigration case?

24 A Yes.

25 Q Now, while you were in immigration custody, did you see

Direct - Osoria - Shihata

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1 Maria again?

2 A Yes.

3 Q Around when was that?

4 A It was April the 29th of 2016.

5 Q And was Maria transferred in -- to the same immigration
6 jail that you were in?

7 A Yes.

8 Q And when you saw Maria in immigration custody, did she
9 show you anything?

10 A Yes. She --

11 Q What do you recall her showing you?

12 A She had a mark on -- like a bruise on her right arm.

13 Q Now, how long were you in immigration custody or jail for?

14 A A year.

15 Q And at some point while you were in immigration custody,
16 did federal agents come and interview you?

17 A Yes.

18 Q And did they ask you about your experience at the MDC?

19 A Yes.

20 Q And did you provide information regarding Lt. Martinez and
21 others at the MDC?

22 A Yes.

23 Q At some point, were you released on bail from immigration
24 custody?

25 A Yes.

Direct - Osoria - Shihata

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1 Q And around when was that?

2 A It was the -- uh-um -- 18th of April of 2017.

3 Q And at that time, did you have an appeal of your removal
4 from the United States pending with a court?

5 A Yes.

6 Q Do you know what happened with that appeal?

7 A They denied it.

8 Q Are you familiar -- and do you know when, around when,
9 that appeal was denied?

10 A No.

11 Q Was it recently?

12 A Yes.

13 Q Are you familiar with the term "Deferred Action?"

14 A Yes.

15 Q And what is your understanding of what Deferred Action is?

16 A It's a letter that you are offered and it's for people
17 who've been victims of a crime.

18 Q Okay. Is what you're referring to what's known as a "U
19 Visa?"

20 A Yes.

21 Q Okay. My question was, do you know, are you -- do you
22 know what the term "deferred action" is?

23 A Uh-um -- it doesn't come to mind right now.

24 Q To your knowledge, did the FBI apply for deferred action
25 for you?

Direct - Osoria - Shihata

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1 A Yes.

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Direct - Osoria - Shihata

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1 Q And does that allow you to --

2 MR. RICCO: Objection, objection, Judge.

3 THE COURT: Sustained.

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Direct - Osoria - Shihata

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1 Q What do you understand what that means with respect to
2 your removal from the United States?

3 A You mean the Deferred Action?

4 Q Correct.

5 A It's only temporary and it's only because I'm going to
6 testify and help the government.

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Direct - Osoria - Shihata

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1 Q Is it so that you are not --

2 MR. RICCO: Objection, Judge.

3 THE COURT: Sustained.

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Direct - Osoria - Shihata

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1 Q If you didn't have deferred --

2 MR. RICCO: Objection.

3 MS. SHIHATA: I'm asking a different question.

4 MR. RICCO: Oh, okay.

5 Q If you didn't have deferred action, would you be removed
6 from the United States and not present here?

7 A Yes.

8 Q And not present to testify in court today; correct?

9 A Yes.

10 MS. SHIHATA: One moment, your Honor.

11 THE COURT: Okay.

12 MS. SHIHATA: No further questions.

13 MR. RICCO: Your Honor, can we take the break before
14 the --

15 THE COURT: Yes.

16 MR. RICCO: -- cross? Thank you.

17 THE CLERK: All rise.

18 (Jury exits the courtroom.)

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1 THE CLERK: Please be seated.

2 MR. RICCO: Judge?

3 THE COURT: Yes.

4 MR. RICCO: We wanted to raise that issue from
5 yesterday but both of us need to use the restroom, so we're
6 going to do that and come right back. Thank you.

7 THE COURT: What was the issue, so I can begin
8 thinking about it?

9 MR. RICCO: Yeah, it has to do with this witness'
10 testimony about her interaction with staff and in the areas
11 that it took place and her knowledge about other activities at
12 the jail. Briefly, Judge --

13 THE COURT: Did Judge Cogan hear all this?

14 MR. RICCO: No.

15 THE COURT: Okay.

16 MR. RICCO: No, this is not --

17 THE COURT: Okay, go to the bathroom.

18 MR. RICCO: Okay.

19 (Recess from 11:50 a.m. until 11:58 a.m.)

20 THE COURT: All right. Do you want to come up?

21 MR. RICCO: Yes.

22 (Discussion held at sidebar.)

23

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Sidebar

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1 MR. RICCO: Judge, I don't know which of these
2 incidents that's in the 3500 is subject to ongoing
3 investigations where there's a need for confidentiality. so I
4 don't know that.

5 MS. SHIHATA: Can I just tell you?

6 MR. RICCO: Okay. So I was just told that with this
7 particular witness, it's an issue, it's a legitimate issue and
8 I appreciate that. But I believe, Judge, of the 15 counts --
9 there are 15 counts in this indictment that require force or
10 threat for there to be sexual contact. I believe that the
11 defendant with respect to that is allowed to show that if there
12 was such a contact, it was not force or it was not as a result
13 of a threat.

14 The witness -- Maria has testified that she got
15 advice as to what to do from the various other women. This
16 witness is one of them. This witness had an incident with a
17 person --

18 THE COURT: Do you want to do this over here?

19 MR. RICCO: Yeah, yes.

20 MS. SHIHATA: That would be better, Judge, if you
21 don't mind.

22 MR. RICCO: Then I don't have to keep on looking over
23 my shoulder.

24 THE COURT: Do we need this noise?

25 THE CLERK: His voice carries all the way to the back

1 of the courtroom.

2 MR. RICCO: I'll talk softer.

3 THE COURT: No, you were talking softly. I'm
4 surprised.

5 MR. RICCO: Yeah, I'll talk soft because I am
6 sensitive to --

7 THE COURT: I know.

8 MR. RICCO: Yeah. So, Judge, this is really simply
9 that I think on 15 of these counts, if the defendant chooses
10 to, he can argue to the jury that the sexual contact here was
11 not rape.

12 THE COURT: I agree with you.

13 MR. RICCO: Right.

14 THE COURT: I said that right from the start that I
15 thought that Judge Cogan had -- was wrong.

16 MR. RICCO: And, Judge, it becomes relevant, what I
17 want to talk about, is because Maria says that she got advice
18 as to what to do from talking to these various women. These
19 women got their advice from their experiences.

20 So for example, this particular woman had an incident
21 or two, or others that I may not know about, with a particular
22 lieutenant --

23 MS. SHIHATA: Not a lieutenant, but --

24 MR. RICCO: Oh, no, he wasn't a lieutenant.

25 MS. SHIHATA: I think here we can say it.

Sidebar

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1 MR. RICCO: Okay. His name is Nunez.

2 MS. SHIHATA: Just so everyone knows.

3 MR. RICCO: Yes. Let me finish and then I'm done and
4 then you can go ahead.

5 MS. SHIHATA: Sure.

6 MR. RICCO: I don't mind.

7 MS. SHIHATA: Okay.

8 MR. RICCO: So she had an incident with this guy,
9 Nunez, where the guy either grabbed her butt or grabbed her
10 vagina. She didn't want it. It was unwanted. And it was
11 followed up, I think, where the guy tried to kiss her and she
12 didn't want that and she bit him.

13 And she made a decision, it was unwanted. You know,
14 my argument wasn't that it was -- and she made a decision, she
15 let it go at the time.

16 But the two of them, the guard and her, have some
17 type of a relationship because they exchange contact
18 information on how to get in touch with each other after she
19 left the jail and they exchanged email, telephone numbers, just
20 what we have here with him, and I think though I am not sure,
21 there was some attempt after she was released for there to be
22 some contact. That, I am not sure about that.

23 So, Judge, my sense is that this defendant has a
24 right to explore, that if this person is the source of the
25 advice that the witness is saying she is relying upon, then

1 where does it come from? Where does it come from?

2 THE COURT: I just want to be sure I understand.

3 MR. RICCO: Uh-hum.

4 THE COURT: This witness.

5 MR. RICCO: This particular one. Oh, sorry, Judge.

6 THE COURT: This particular witness gave advice, is
7 that it?

8 MR. RICCO: Yes, her and others, yes.

9 THE COURT: And what was the advice?

10 MR. RICCO: Well, that you'll lose your good time
11 credit. So don't go to the SHU. This particular witness, a
12 witness I believe, exercised that same option itself.

13 THE COURT: Which witness now?

14 MR. RICCO: The one on the stand now that I will be
15 crossing. She didn't go to the SHU. She let it ride, so to
16 speak.

17 THE COURT: Right.

18 MR. RICCO: And that was the advice that she gave
19 to --

20 MS. SHIHATA: Maria.

21 MR. RICCO: I'm sorry, thank you.

22 MS. SHIHATA: Okay.

23 MR. RICCO: And, Judge --

24 THE COURT: So you want to just ask her if she gave
25 her that advice?

Sidebar

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1 MR. RICCO: But I also wanted to -- based on what?
2 Is it, you know -- she's giving advice based on --

3 THE COURT: And what is she going to say? What do
4 you expect her to say?

5 MR. RICCO: Well, I would -- I mean, I want to do it
6 in a way that -- I don't want to mislead anyone but I don't
7 want to destroy the government's investigation.

8 I mean, it would just be simply as a result of
9 contact that a staff member had with you, but if the government
10 is saying well, Judge, that means we have to have a full
11 hearing, I don't believe that.

12 THE COURT: What do you mean full hearing?

13 MR. RICCO: Well, I think that's going to be the
14 response but that's what I would want to do. I would want the
15 jury to know that this witness had an incident. She handled it
16 by letting it ride. She continued a communication and dialogue
17 with the guard while she was in the jail.

18 THE COURT: Are we talking about --

19 MR. RICCO: The same lady, Nunez.

20 She continued the relationship with him. They
21 exchanged information, contact information. They planned to
22 get together afterwards and she got her good time and she left.
23 And then she is later reunited with Maria at immigration. And
24 that's it.

25 MS. SHIHATA: I just don't see how it's relevant,

1 Judge. I understand what he is saying that this witness gave
2 Maria advice, but the basis for the advice is really irrelevant
3 because really what's -- the issue of consent comes down to
4 Maria.

5 THE COURT: Well, what is she going to say? Do we
6 know what the basis for her advice is? This is why I hate to
7 do things this way.

8 MS. SHIHATA: I know, Judge, but one thing --

9 THE COURT: Do you have any objection to my clearing
10 the Court?

11 MR. RICCO: No, I do not, no.

12 MS. SHIHATA: Judge?

13 MR. RICCO: I mean for the purposes of --

14 THE COURT: For this limited purpose --

15 MR. RICCO: For the purposes of us having a legal
16 discussion --

17 THE COURT: Right here.

18 MR. RICCO: -- we have no objection to the Court
19 clearing the courtroom and I will get the consent of the
20 defendant.

21 MS. SHIHATA: Does that mean we can do it over there?

22 THE COURT: And I want to --

23 MS. ARGENTIERI: Yeah, and then we don't have to have
24 the noise.

25 THE COURT: -- follow my practice of having him put

1 the questions to the witness.

2 MS. SHIHATA: Okay. I mean --

3 THE COURT: So far, we've solved two issues by my
4 hearing.

5 MR. RICCO: So, Judge, Mr. Martinez will consent on
6 the record to the courtroom being cleared, so that we can have
7 this conversation about this matter that's subject to a pending
8 investigation.

9 THE COURT: It may be more than a conversation
10 because I may want to do the same thing I've done before is let
11 you question the witness.

12 MR. RICCO: And he would have no objection to that
13 taking place outside the presence of the jury.

14 THE COURT: Okay.

15 MR. RICCO: And did not have any objection to it when
16 it was done the first time.

17 MS. SHIHATA: Judge?

18 THE COURT: What first time?

19 MR. RICCO: We did it with Maria.

20 MS. ARGENTIERI: The other times you were
21 referencing --

22 MS. SHIHATA: But we didn't clear the courtroom.

23 THE COURT: We know.

24 MR. RICCO: We didn't clear -- that's right, we
25 didn't clear the courtroom.

Cross - Osoria - Ricco

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1 MS. SHIHATA: Judge, if we could just tell the
2 witness -- I think sometimes it's confusing for the witness who
3 doesn't know how court proceedings work, that first she is
4 being asked questions without the jury present and then she may
5 get asked the same exact questions with.

6 THE COURT: Okay.

7 MR. RICCO: I have no objection to that.

8 MS. SHIHATA: So if we could just explain.

9 THE COURT: All right.

10 I am going to clear the courtroom for about ten
11 minutes. Will everybody leave?

12 THE CLERK: Ladies and gentlemen, please exit the
13 courtroom. We'll let you know when the courtroom is open
14 again.

15 (Courtroom cleared at 12:07 p.m.)

16 (Sealed portion of proceeding from 12:07 p.m. until 1:05 p.m.)

17 THE CLERK: May I unseal the courtroom, Judge?

18 MS. ARGENTIERI: Yes.

19 THE COURT: Yes.

20 (Sidebar concludes.)

21 (Recess from 1:06 p.m., until 1:14 p.m.)

22 (Jury enters)

23 CROSS EXAMINATION

24 BY MR. RICCO:

25 Q Good afternoon.

Cross - Osoria - Ricco

593

1 A Good afternoon.

2 Q I think you told us that after meeting with SIS Officer
3 Rodriguez, Maria seemed scared and nervous.

4 A Yes.

5 Q Did she explain to you why she was scared and nervous?

6 A Yes.

7 Q Now you -- you knew it was about a telephone call, right?

8 A Yes.

9 Q Now you didn't listen to the call, did you?

10 A No.

11 Q And you wasn't standing next to you when she made the
12 call, were you?

13 A No.

14 Q So what you know about the call is what Maria told you
15 about the call, right?

16 A Yes.

17 Q Now, remember that testimony you gave us about the bruised
18 arm when Maria got to immigration?

19 A Yes.

20 Q And you gave us that whole explanation about it?

21 A Yes.

22 Q You wasn't there when that happened, were you?

23 A No.

24 Q You were basing your information on what Maria told you,
25 right?

Cross - Osoria - Ricco

594

- 1 A Yes.
- 2 Q Now you told us about an after morning pill?
- 3 A Yes.
- 4 Q And you said you saw the packaging?
- 5 A Yes.
- 6 Q Could you show us with your fingers how big or small the
- 7 pill packaging was?
- 8 A Like this size.
- 9 Q Okay.
- 10 A Two fingers wide? Like the packaging from an individual
- 11 pill that you can buy at a place.
- 12 Q You said that you read the packaging, did you?
- 13 A Yes.
- 14 Q What did it say?
- 15 A I saw that packaging a while ago. I can't remember but I
- 16 did translate what it said to her.
- 17 Q I'm going to show the witness for identification purposes
- 18 only Government Exhibit 240.
- 19 A Okay.
- 20 Q I want to ask you a question. Are you familiar with the
- 21 term Plan B?
- 22 A It's familiar. I see it on TV. Yes.
- 23 Q Have you ever used that term yourself?
- 24 A No.
- 25 Q 3500DL05A, page 29, line 24.

Cross - Osoria - Ricco

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1 THE CLERK: Is that for the record, counsel?

2 MR. RICCO: Yes, it was. Sorry. I was walking away
3 from the mic. I'm sorry.

4 Q Do you remember testifying in a prior proceeding? Yes or
5 no?

6 A No.

7 Q I'm going to ask you if on a prior occasion you were asked
8 -- withdrawn. Have you ever had to swear to tell the truth in
9 connection with any statements you've ever made about this
10 case? Had you ever had to swear? That is, be placed under
11 oath and give information about this case?

12 A Yes.

13 Q And do you remember on that occasion -- do you remember
14 being asked this question and giving these answers?

15 "Question: Did you read what was on it?

16 Answer: Yes.

17 And did you confirm what type of pill it was?

18 Answer: Yes.

19 And what type of pill was it?

20 Answer: The morning after pill, Plan B."

21

22 Did you give that statement under oath?

23 A Yes, I did. Yes.

24 Q And when you told us that when Maria said to you he stuck
25 it in me, were you present when that happened?

Cross - Osoria - Ricco

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1 A When he penetrated her?

2 Q When she said he penetrated her?

3 A She told me.

4 Q Were you present? Do you understand what that question
5 means? Where you there?

6 MS. SHIHATA: Objection.

7 THE COURT: Overruled.

8 A Not during the act but she told me about it after the act.

9 Q That's not my question. Do you understand the question?
10 Were you there when it happened?

11 A No.

12 Q You were relying upon what Maria told you, right?

13 A Yes.

14 Q And the whole testimony about the penis in the mouth, you
15 wasn't present when that happened, where you?

16 A No.

17 Q Now I want to ask you a question about the jail.

18 Is it unusual for the inmates and the guard to use first
19 names with each other?

20 A It's not normal.

21 Q Then tell us, who's Little Rooster?

22 A That's a nickname we gave Nunez, I think. I think it was
23 Nunez. I think so. I don't know. I don't know.

24 Q 3500. Sorry --

25 THE CLERK: Any microphone will do.

Cross - Osoria - Ricco

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1 MR. RICCO: Okay.

2 Q 3500DLR5A page 43. Oh, no. I'm sorry. I'll come back to
3 that. I'll come back to that. I'll come back to that.

4 Is it unusual for the staff to give inmates personal
5 information about where they live, their telephone numbers.
6 Has that happened?

7 MS. SHIHATA: Judge, I object because it's a compound
8 question. Unusual and does it happen are two different things.

9 MR. RICCO: I'll break it down. I'll withdraw the
10 question, Judge.

11 Q Do inmates give personal information about their family,
12 their relatives to guards?

13 A Yes.

14 Q You've done it yourself, right?

15 A Yes.

16 Q And do guards give personal information to themselves
17 about -- withdrawn.

18 Do guards give personal information about themselves to
19 the inmates?

20 A Yes.

21 Q In fact, a guard wanted to give you, or did give you
22 personal information about him, an email address, right?

23 I'll withdraw the question.

24 A No.

25 Q Did a guard ask you for your email address?

Cross - Osoria - Ricco

598

1 A Yes.

2 Q You didn't give him your email address, did you?

3 A No.

4 Q You gave him your telephone number and other contact
5 information for your relatives, right?

6 A Yes.

7 Q And that was so that you could get together after you were
8 released.

9 MS. SHIHATA: Objection.

10 THE COURT: Overruled.

11 A Yes.

12 Q Now when I asked you about the personal information that
13 you gave to a particular guard, you didn't give it to him
14 directly, did you? You gave it to another guard to give to
15 him, right?

16 A Yes.

17 Q Now I want to go back to the Plan B pill.

18 Was the pill packaging -- was the pill packaging for the
19 pill that you saw, did it say Plan B; yes or no?

20 A Yes.

21 Q Now in Spanish plan is the same word. In English and in
22 Spanish, correct?

23 A Yes.

24 Q And Plan B, that's a brand name, isn't it?

25 A I don't know if it's a brand name, but it's a pill we all

Cross - Osoria - Ricco

599

1 know about so you don't get pregnant.

2 Q Okay. And the way you write Plan B is -- in Spanish would
3 be P-L-A-N, the letter B. Isn't that correct?

4 A Yes.

5 Q So if one does not speak English, or read English, if you
6 can read in Spanish, you can read an item bought over-the-
7 counter that says Plan B, correct?

8 A Yes.

9 Q Now in front of you for identification -- withdrawn.
10 You were at MDC with Maria, correct?

11 A Yes.

12 Q And you were in -- and you were also in immigration with
13 Maria, correct?

14 A Yes.

15 Q And when you were in MDC she talked about her interactions
16 with Lt. Martinez, right?

17 A Yes.

18 Q And when she was in immigration she talked about her
19 interactions with Lt. Martinez, correct?

20 A Yes.

21 Q And of all of the conversations that she told you about,
22 you weren't present for any of them, were you?

23 THE COURT: I think you have to make the question
24 clearer.

25 Q You weren't there when the events took place that she was

Cross - Osoria - Ricco

600

1 describing. Thank you, Judge.

2 A Yes.

3 Q Now --

4 THE COURT: You mean, yes, you weren't there.

5 THE WITNESS: Yes, I wasn't there.

6 Q Now, you were asked by the prosecutor questions about the
7 pill packaging. And the question was the Plan B pill he would
8 bring her.

9 MS. SHIHATA: Objection. I think that
10 mischaracterizes what the question --

11 THE CLERK: Microphone.

12 MS. SHIHATA: Objection. I think that misstates what
13 the question was.

14 THE COURT: Well, the jury's recollection will
15 govern. Go ahead.

16 Q We want to be clear here. Your testimony was that you saw
17 one Plan B pill.

18 A A package -- the packaging.

19 Q And the package had information on it about what it was,
20 right?

21 A Yes.

22 Q And you saw that once?

23 A Yes.

24 Q Now, this morning in response to questions you said you
25 were happy to be here.

Cross - Osoria - Ricco

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1 MS. SHIHATA: Objection. That misstates the
2 testimony as well.

3 THE COURT: I think that to the extent that I
4 recollect, it may not -- ladies and gentlemen, I can't remember
5 everything that was said. Your recollection will govern. And
6 as you can see, every word has been recorded and already
7 transcribed, except for what testimony was given this morning.

8 So when you're in the jury room, you'll be able to
9 ask to have testimony re-read or actually sent in to you.
10 So if there's any question in your mind as to what was said
11 that's important to you, you'll be able to have the transcript
12 of that testimony available to you.

13 MR. RICCO: Judge, I'll withdraw the question.

14 BY MR. RICCO:

15 Q I want to go back -- we'll come back to it.

16 But I want to go back to when I was asking you about these
17 names.

18 Did you ever refer -- that is --

19 THE INTERPRETER: Counselor, the interpreter did not
20 hear the very end of the question.

21 MR. RICCO: Okay. I'll withdraw it and I'll restate
22 it.

23 Q Did you, Ms. Osoria, ever refer to Officer Nunez by the
24 name Gallito, G-A-L-L-I-T-O?

25 A Gallito, but I never said that to him, no.

Cross - Osoria - Ricco

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1 Q Do you remember testifying -- okay. I didn't ask you if
2 you said that to him. Did you ever refer to him by that name,
3 Gallito?

4 A Yes.

5 Q And that means little rooster, doesn't it?

6 A Yes.

7 Q And what did you call him that?

8 A Because he would come into the unit, you know, walk
9 around. He was kind of a small guy and he sort of strutted
10 around like a rooster with his chest out.

11 Q Okay. And did Officer Nunez have a nickname for you?

12 A Officer Nunez didn't have a nickname for me. Everybody
13 had a nickname for me, even my family.

14 Q Okay. Do you remember being under oath in a prior
15 proceeding and in that proceeding you were put under oath and
16 you swore to tell the truth, correct?

17 A Yes.

18 Q Just like today?

19 A Yes.

20 Q "Question: Now, did Officer Nunez have a
21 nickname for you?

22 Answer" --

23 I'm going to read it, Interpreter.

24 "Pajonua and grenua."

25 Spelled P-A-J-O-N-U-A and Grenua, G-R-E-N-U-A.

Cross - Osoria - Ricco

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1 "Question: And what do those Spanish words
2 mean?

3 Answer: Poofy hair."

4 Was that your sworn testimony under oath?

5 THE COURT: I don't think the interpreter finished?

6 MR. RICCO: Oh, I'm sorry, Judge. Forgive me.

7 THE INTERPRETER: Thank you, Judge.

8 A Yes.

9 Q I think you told us that the FBI applied for something
10 that allowed you to stay in the country temporarily, right?

11 A Yes.

12 Q And I take it you're happy with that, that you're still
13 here, right?

14 A Yes.

15 Q Because you got your kids here, your family here and you
16 can stay together, right?

17 A Yes.

18 Q The reason for deportation is because I think you were
19 here with a valid Green Card, right?

20 A Yes.

21 Q And I think at some point in your life you had jobs,
22 right?

23 A Yes.

24 Q But then you decided to get involved with a conspiracy to
25 distribute heroin.

Cross - Osoria - Ricco

604

1 A Yes.

2 Q And you got caught?

3 A Yes.

4 Q Did it make you cry when you got caught?

5 A Yes.

6 Q Were you upset when you got caught?

7 A Yes.

8 Q And I think that you told us that when you were in jail
9 you wanted to get out of jail, right?

10 A Yes.

11 Q Because you wanted to get back to your family, your kids.

12 A Yes.

13 Q That you were thinking about those kids when you were in
14 jail.

15 A Yes.

16 Q But you wasn't thinking about those kids when you were
17 conspiring to distribute heroin, were you?

18 A I was thinking about my daughters.

19 MR. RICCO: Thank you. No further questions.

20 MS. SHIHATA: No questions, Judge.

21 THE COURT: Thank you. You can step down.

22 (Witness excused.)

23 THE CLERK: Next witness, counsel?

24 MS. ARGENTIERI: The government calls Jenan Dahmen
25 Mora.

Direct - Mora - Argentieri

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1 JENAN DAHMEN MORA, GOVERNMENT'S WITNESS, SWORN

2 THE CLERK: Please be seated.

3 MS. ARGENTIERI: May I?

4 (Pause.)

5 THE COURT: Go ahead.

6 MS. ARGENTIERI: Thank you, Judge.

7 DIRECT EXAMINATION

8 BY MS. ARGENTIERI:

9 Q Can you please state and spell your name for the record?

10 A Yes. It is Jenan Dahmen Mora. That is J-E-N-A-N D-A-H-M-
11 E-N M-O-R-A.

12 Q Where do you work?

13 A I work at Facebook.

14 Q How long have you worked there?

15 A About seven months.

16 Q What is your position there?

17 A I'm a custodian of records.

18 Q And have you had the same position for seven months?

19 A Yes, I have.

20 Q What are your duties and responsibilities?

21 A I review legal process according to Facebook policy and
22 applicable law and I testify as needed.

23 Q This is an existential question. What is Facebook?

24 A Facebook is a social media network where account holders
25 can share and connect with other account holders.

Direct - Mora - Argentieri

606

1 Q How does someone create a Facebook page?

2 A You go to www.facebook.com and you enter the required
3 fields.

4 Q And now when you sign up for Facebook, are you assigned a
5 user ID?

6 A Yes, you are.

7 Q And is that a unique number?

8 A Yes, it is.

9 Q And what other information do you put in?

10 A You have to enter your name, date of birth, gender and
11 either an email address or a phone number.

12 Q And in Facebook, some things are public and some things
13 are not. Is that fair?

14 A Correct, depending on the settings on the account.

15 Q So what, if any, control does a user have, a Facebook
16 user, over whether an account is public or not?

17 A They can adjust the privacy setting according to what they
18 want people to see.

19 Q And what types of records does Facebook keep about the
20 activity on a user's account?

21 A Records such as name, gender, photos, videos and anything
22 else the account holder chooses to share.

23 Q And how does Facebook store these records?

24 A Electronically.

25 Q And are the copies of the data that are shared by the user

Direct - Mora - Argentieri

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1 kept by Facebook?

2 A They are.

3 Q And are those records kept and maintained in the ordinary
4 course of business?

5 A They are.

6 MS. ARGENTIERI: Judge, can I show just the witness
7 Government Exhibit 213 for identification?

8 Q So on your screen is a document. Have you reviewed this
9 previously?

10 A I have.

11 Q And did you initial and date on the front cover?

12 A Those are the records produced by Facebook pursuant to
13 valid legal process for this particular account.

14 Q And is this just a subset of the records that were
15 produced?

16 A It is.

17 Q Were they maintained in the ordinary course?

18 A They were.

19 MS. ARGENTIERI: Judge, we move to admit 213.

20 MR. RICCO: Without objection, Judge.

21 THE COURT: It's admitted.

22 (Government's Exhibit No. 213 received into evidence.)

23 MS. ARGENTIERI: Judge, may I publish it to the jury?

24 BY MS. ARGENTIERI:

25 Q So now looking at the first page -- looking at the first

Direct - Mora - Argentieri

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1 page at the top, where it says "target target," what is that?

2 A That is the unique user ID associated with the account.

3 Q And where this says "generated," what does that mean?

4 A That is the date and time on which these records were
5 generated.

6 Q And so these are the records that were generated as of
7 what date?

8 A These records were generated as of May 31st, 2017 at
9 16:44:30, UTC.

10 Q And what is UTC?

11 A It is universal time coordinated. It's a standard time
12 zone that never changes.

13 Q So it's a neutral time zone.

14 A Correct.

15 Q And depending on whether we're in Daylight Savings or not,
16 is it different when compared to Eastern Standard Time?

17 A UTC itself will always stay the same.

18 Q Okay. And so these are records that were generated --
19 that existed at Facebook as of May 31st, 2017 for what date
20 range?

21 A For the date range of February 1st, 2016 at zero UTC to
22 February 28th, 2016 at 23:59:59 UTC.

23 Q Okay. Now if we go down to name, what name is this
24 account for?

25 A It is for first name Carlos, middle name Rich, last name

Direct - Mora - Argentieri

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1 Martinez.

2 Q And is that information the user would have input?

3 A Yes.

4 Q And if you go down to registered email, under that there's
5 an email address?

6 A Yes. Two email addresses.

7 Q And what is the AOL one?

8 A It is Martinez1c@aol.com.

9 Q And, again, that's information the user would have input?

10 A Yes.

11 Q And then what is a vanity name?

12 A A vanity name is like a screen name, or a user name. It
13 is associated with the account and the user can change it.

14 Q So is that the name that sort of pops up when you search
15 for someone? The name of the account that's public?

16 A The name -- the actual display name on the account would
17 be the part that says name. The vanity name can appear in
18 let's say the URL.

19 So if you're on the account and you look at the URL it
20 might show at the end of the URL either the vanity or the user
21 ID.

22 Q You've exceeded my knowledge of Facebook. Okay.

23 And then down here where it says registration date, what
24 does that mean?

25 A That is the date and time on which the account was

Direct - Mora - Argentieri

610

1 created.

2 Q And so this account was created when?

3 A On February 8th, 2009 at 22:36:46 UTC.

4 Q And then where it says account closure date, account still
5 active, false. What does that mean?

6 A That means that, in this case, that the account has been
7 deactivated as of this date.

8 Q And if we go down here where it says current city, what is
9 that?

10 A That is the information that the account holder input
11 regarding their location. So in this case it is Brooklyn, New
12 York.

13 Q What about phone number?

14 A That is the phone number associated with the account.

15 Q And down where it says credit card, what is that?

16 A That is the credit card associated with the account.

17 Q Okay. Now I'd like to just go over some of the privacy
18 settings.

19 So I'm going to direct your attention to just before that.
20 What are application?

21 A Application? That is information about applications that
22 the account holder either installed directly on Facebook, or
23 that they synchronized from their phone to Facebook.

24 Q Okay. And then if we turn to -- this is marked page 15 at
25 the top. For the record, it says privacy settings.

Direct - Mora - Argentieri

611

1 So what does Facebook capture here?

2 A That is the information about different categories within
3 the Facebook account and what the account holder -- what sort
4 of privacy settings they installed for each -- they chose for
5 each of those categories.

6 Q So, for example, this has "Name. About me. Value, your
7 friends." What does that mean?

8 A That means that any information that is in the About Me
9 section on the Facebook page in this case is only visible to
10 the account holder's friends.

11 Q And so what about if you go down here where it says "Can
12 friend, value public." What does that mean?

13 A That means that it is publicly possible, meaning within
14 the realms of Facebook, to friend this account holder.

15 Q So anyone on Facebook can friend this account holder.

16 A Correct.

17 Q Okay. And then it says "Can like and comment" -- I'm
18 sorry. Below that is what I meant to draw your attention to.
19 And this is over two pages. So at the bottom of page 15 it
20 says, "Name. Can message." And at the top of page 16 it says
21 "Value public." What does that mean?

22 A That means that it is publicly possible, again, within
23 Facebook to message the account holder.

24 Q So anyone with a Facebook account could message this
25 account holder.

Direct - Mora - Argentieri

612

1 A Correct.

2 Q And then down here where it says "Named friends, value
3 public," what does that mean?

4 A That means that anybody can see the information that is
5 within the Friend section of the account holder. So anybody
6 that is friends with the account holder, other account holders
7 can see their -- the name.

8 Q And then here where it says -- on page 18 at the top is
9 the label, it says "Name, search by name, value public." What
10 does that mean?

11 A That means that anybody on Facebook can search for the
12 account holder by name.

13 Q And just above that where it says "Search by email, value
14 public," what does that mean?

15 A That means that anybody on Facebook can search for the
16 account holder by email.

17 Q Okay. Just -- I wanted to ask you just as a general
18 matter when it says "Privacy block, blocker blocked," what does
19 that mean?

20 A Privacy blocks means -- it's basically ingoing and
21 outgoing blocks. So anybody that has blocked the account
22 holder or has been blocked by the account holder.

23 Q So I'm not going to go through these, but for the first
24 one it says "blocker" and "Daisy Zaydee blocked Carlos Rich
25 Martinez." What does that mean about that entry?

Direct - Mora - Argentieri

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1 A So in that particular case it means that the person doing
2 the blocking is Daisy Zaydee, and that number next to it, that
3 is the UID and the person being blocked is Carlos Rich Martinez
4 with a UID next to it.

5 Q Okay. And that's the same UID as this account.

6 A Correct.

7 Q Okay. So just to move along, on page 21 --

8 THE COURT: Is all of this necessary to go through
9 everything for the terms that you're (indiscernible) this?

10 MS. ARGENTIERI: I'm sorry, Judge. I couldn't hear
11 you?

12 THE COURT: Do we have to go through every little
13 thing in this document --

14 MS. ARGENTIERI: Yes, Judge. Unfortunately --

15 THE COURT: -- that you're using --

16 MS. ARGENTIERI: Unfortunately, it's not completely
17 intuitive what the definitions mean. I promise I'm not going to
18 belabor it, but even as a Facebook user myself, I didn't quite
19 understand the records. I promise to move through it quickly.

20 THE COURT: Okay.

21 Q So on page 21 it says -- where it says "Gender and date of
22 birth," were those entered by this account number -- account
23 holder?

24 A Yes.

25 Q And then I just had a question -- well -- hold on.

Direct - Mora - Argentieri

614

1 (Pause.)

2 I'm going to go to page 364. Okay.

3 So -- and just before this -- this is the Friend Request
4 section of the Facebook record. Here it says "Sender,
5 Larihelys Vargas. Recipient Carlos Rich Martinez."

6 What does that mean?

7 A That means that the person sending the friend request is
8 the sender so Larihelys Vargas, and that the person receiving
9 the friend request is Carlos Rich Martinez.

10 Q And then based on this record, at what time and date was
11 this friend request sent?

12 A On February 7th, 2016 at 18:53 UTC.

13 Q And then where it says "Rejected true, accepted false."
14 What does that mean?

15 A That means that this particular friend request was
16 rejected and, therefore, was not accepted.

17 Q Now I want to ask you just about a photo that appears on
18 the account that was messaged.

19 So can you explain, basically here, where it says "Author,
20 Carlos Rich Martinez, sent February 26th, 2016 at 18:36 to
21 Terry's page."

22 A Yes. So yes. So in this particular case, it's a message
23 sent by Carlos Rich Martinez on that particular date and those
24 are the two recipients, which basically are the two people
25 involved in the conversations. In this case the recipient is

Direct - Mora - Argentieri

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1 Terry's page.

2 Q And then this URL is for the photo on the page after it?

3 A Correct. It's an internal URL associated with the photo.

4 Q And then my last set of questions is about this messaging
5 conversation. I'm sorry. Let me make it so you can see it.

6 For the record, at page 664 on the top.

7 Now it says "Thread," and then it says "Author sent and
8 recipients." So can you tell who is this message thread
9 between?

10 A This message thread is between Larihelys Vargas and Carlos
11 Rich Martinez.

12 Q And can you tell when it began?

13 A Yes. On February 7th, 2016 at 20:40:43 UTC.

14 Q And where it says body, is that -- is that the substance
15 of the message?

16 A Yes, that is the content of the message.

17 Q And are those dates and times true -- so, for example,
18 where it says "Sent," that's the time that that message was
19 sent.

20 A Yes.

21 Q And does that message take place all throughout this page,
22 back and forth?

23 A Yes.

24 Q And every time it says "sent" that's what time the user
25 sent the message?

Cross - Mora - Santiago

616

1 A Correct.

2 Q And does it continue all through the next page on 665?

3 A Correct.

4 Q And does it finish on page 666?

5 A It does.

6 MS. ARGENTIERI: Judge, can I have one second?

7 (Pause.)

8 No further questions.

9 MR. RICCO: May I inquire, Your Honor?

10 THE COURT: Yes.

11 CROSS EXAMINATION

12 BY MR. SANTIAGO:

13 Q Sorry about that. Good afternoon. I'm just going to ask
14 you a couple of questions again about how the Facebook accounts
15 are organized, and also the import of how to memorialize how
16 you say it. Is that right?

17 A Uh-huh.

18 Q Okay. So just to start again from the very beginning, the
19 actual accounts that we were just talking about, the way
20 they're organized is the very, very top.

21 If somebody just wanted to pick up that file, when they
22 pick it up, very, very top on the right-hand side page number,
23 clear page number. Correct?

24 A Uh-huh.

25 Q Okay. And then as you just stated, the report begins and

Cross - Mora - Santiago

617

1 it starts with which name is associated with that account. And
2 that account has a specific number, correct?

3 A Correct.

4 Q Okay. And that number does not change?

5 A Correct.

6 Q Okay. The email associated with the account?

7 A That is also listed on there.

8 Q And that vanity Facebook profile name you talked about,
9 that's on there, right?

10 A Correct.

11 Q And then also when the account was created.

12 A Correct.

13 Q And then once you start going into the messages of the
14 account, the account is organized from most recent message to
15 the oldest message, correct, as you read the account?

16 A The threads are, yes.

17 Q Yes. And to those threads you just said.

18 A Uh-huh.

19 Q Now that thread is also a unique number, right? There's a
20 unique number associated with that thread, correct?

21 A Correct.

22 Q And with every conversation that has a thread, at the very
23 beginning of that conversation is that thread heading.

24 A Correct.

25 Q Right? So even before a person actually starts reading

Cross - Mora - Santiago

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1 the messages, the content of the messages, you know the thread
2 and you know who the participants are in that conversation.

3 A Per the records?

4 Q For the records.

5 A For the records, yes, that is the information listed on
6 there.

7 Q And then each participant, if they're -- since they're
8 both Facebook holders, would have the participant's name, and
9 then right next to the name, that unique identification number
10 we talked about right next to it.

11 A Correct.

12 Q Okay. And that gives you the context of what you're going
13 into for that conversation, correct?

14 A Correct.

15 Q Now, the -- once you get into that conversation, it's also
16 organized in a very specific way, okay? Each conversation.
17 And each conversation message has who sent the message,
18 correct?

19 A Correct.

20 Q It has the date the message was sent.

21 A Correct.

22 Q What time the message was sent, correct?

23 A Correct.

24 Q And you went to that whole UTC thing, right?

25 A Uh-huh.

Cross - Mora - Santiago

619

1 Q And to be clear, again, UTC is a time that doesn't change.

2 A Correct.

3 Q Okay. So if I'm in Eastern Standard Time and I'm sending
4 an email, or Pacific Standard Time and I'm sending an email,
5 the UTC time will always be the same, right?

6 A Correct.

7 Q And then you get into what the actual message was, the
8 body of the message, correct?

9 A Correct.

10 Q And this is all done for a specific purpose because we
11 have to be able to memorialize this, which means save it. You
12 know, it's a fancy word to save it, right?

13 A Uh-huh, to keep track, yeah.

14 Q To keep track of it.

15 A Uh-huh.

16 Q Okay. And for moments like this if somebody has to
17 testify or somebody needs to read the documents, you know right
18 away where to go and what to look at, correct?

19 A Correct.

20 Q Okay. So as you were just looking at the records, you
21 were discussing Mr. Martinez, and a conversation about Ms.
22 Vargas, between a Ms. Vargas and a Mr. Martinez during direct,
23 correct?

24 A Correct.

25 Q Okay. So in the way that this is organized in the

Cross - Mora - Santiago

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- 1 Facebook world, if Mr. Martinez was sending an email or a
2 message to Ms. Vargas, and Mr. Martinez said, do you want to go
3 to a basketball game, and Ms. Vargas said yes. It would say,
4 "Mr. Martinez: Do you want to go to a basketball game?" "Ms.
5 Vargas: Yes."
- 6 A Correct.
- 7 Q Correct? And then if Ms. Vargas said, "Do you have a
8 ball?" And Mr. Martinez said, "Yes," it would say, "Ms.
9 Vargas: Do you have a ball?" "Mr. Martinez: Yes."
- 10 A Correct.
- 11 Q And then all -- that would be stamped with a date and
12 time, that universal standard time, right?
- 13 A Correct. Each message.
- 14 Q Universal -- what's that?
- 15 A Each message would be stamped.
- 16 Q Each message.
- 17 A Yeah.
- 18 Q Specific message. Thank you. And subsequently, if they
19 decide not to go to a basketball game to play basketball, if
20 Mr. Martinez emailed Ms. Vargas and said, "Do you want to take
21 a bicycle ride around New York City?" And Ms. Vargas said,
22 "Yes," it would say, "Mr. Martinez: Do you want to take a
23 bicycle ride to New York City?" And you would clearly say it's
24 Mr. Martinez with the identification number, correct?
- 25 A You said emailed. Are you still referring to the --

Cross - Mora - Santiago

621

1 Q Or a message. The message account, sorry.

2 A Yes, correct.

3 Q Okay. Thank you for listening. And then if Ms. Vargas
4 said, "Well, do you have a bicycle chain? Do you have a
5 chain," it would say, date and time, correct?

6 A Correct.

7 Q Right? So Facebook wouldn't be able to ask it -- ask if
8 Ms. Vargas is asking about a ball or a chain, you know, they'd
9 know. They would have had that access to that record, right?

10 A That information would be in the messages.

11 Q And then the way the people go, page number on top,
12 correct?

13 A Correct.

14 Q Then once you get to page number you see, there's a
15 thread, and that thread has the actual thread identification,
16 correct?

17 A Correct.

18 Q And then those participants, right on the thread, right
19 beginning when you see that, it says who they are.

20 A Correct.

21 Q And then you'd be able to see that message in the
22 hypotheticals I just said if Ms. Vargas was asking for -- about
23 a ball and chain, correct?

24 A Correct.

25 Q Okay.

Cross - Mora - Santiago

622

1 MR. SANTIAGO: One brief moment, Your Honor.

2 BY MR. SANTIAGO:

3 Q So now that we've outlined this and people understand how
4 to read it, once you get to that thread, you can kind of just
5 cut through it and read the thread of message, correct?

6 A Correct.

7 Q Okay. So I'm just going to read from what's just been
8 entered into evidence as Government's 213. 213. 213.

9 So after I understand the thread, I would read, "Hi, you
10 requested me. Do I know you?"

11 Then I would read --

12 MS. SHIHATA: Sorry, can you put it on the screen?

13 MR. SANTIAGO: Oh, yes. Sorry.

14 MS. ARGENTIERI: Do you want the one I have?

15 MS. SHIHATA: Do you want the original?

16 MR. SANTIAGO: That's fine.

17 (Pause.)

18 BY MR. SANTIAGO:

19 Q So as you've established, we have this thread, which is a
20 series of numbers, and then the author, Carlos Rich Martinez,
21 with that identification next to it, correct?

22 A Correct.

23 Q The time it was sent, and the recipient is Larihelys
24 Vargas, with that also identification number we just discussed.
25 Correct?

- 1 A Correct.
- 2 Q Okay. So it says, and I won't repeat for the rest of the
- 3 -- who the author was and who it was sent, because we've
- 4 established that, correct?
- 5 A Correct.
- 6 Q So it reads, "Hi. You requested me. Do I know you?"
- 7 Correct?
- 8 A Correct.
- 9 Q And then Vargas's response is, "Yes, I did. You don't."
- 10 Correct?
- 11 A Correct.
- 12 Q And then Mr. Martinez goes, "Who are you?"
- 13 A Correct.
- 14 Q And then Vargas goes, "I just want to be your friend."
- 15 A Correct.
- 16 Q Vargas continues, "Is that bad?"
- 17 A Correct.
- 18 Q Mr. Martinez, "Hell no, it's not. Just wondering why a
- 19 beautiful woman like you wants to request me."
- 20 A Correct.
- 21 Q Ms. Vargas goes, "Okay."
- 22 A Correct.
- 23 Q Continuing on to page 665. Ms. Vargas says, "Are you
- 24 married or something?"
- 25 A Correct.

Cross - Mora - Santiago

624

- 1 Q Mr. Martinez, "Where do you reside?"
- 2 A Correct.
- 3 Q Vargas, "I don't want to get trouble."
- 4 A Correct.
- 5 Q And she responds to that question, "Buffalo." Correct?
- 6 A Correct.
- 7 Q And Mr. Martinez responds, "Yes, I'm married."
- 8 A Correct.
- 9 Q Mr. Martinez says, "It's okay."
- 10 A Correct.
- 11 Q Vargas says, "Oh, okay."
- 12 A Correct.
- 13 Q To page 66, and Mr. Martinez says, "I'm happily married.
- 14 Sorry."
- 15 A Can you pull down the page a little bit so I can --
- 16 Q Yes, I can.
- 17 A Oh, I guess it's on the previous page. Can I just see the
- 18 previous page one more time?
- 19 Q Not a problem.
- 20 A The bottom of it.
- 21 Q I'm turning back to page 665.
- 22 A So, does the very bottom, author? Okay. Now I can see
- 23 the following page.
- 24 Q Thank you for verifying who the author was.
- 25 A Uh-huh.

Cross - Mora - Santiago/ Direct - Maldonado - Argentieri 625

1 Q And so to be clear, that's Mr. Martinez again who says,
2 "I'm happily married, sorry."

3 A Correct.

4 Q Correct. Ms. Vargas responds, "That's good."

5 A Correct.

6 Q Mr. Martinez says, "Nice meeting you. Take care."

7 A Correct.

8 Q And Ms. Vargas says, "You too."

9 A Correct.

10 Q And as I just stated earlier with the threads and the
11 participants, we know that that's the end of the conversation,
12 correct?

13 A Correct.

14 MR. SANTIAGO: Thank you. I have nothing further.

15 MS. SHIHATA: We have nothing.

16 THE COURT: Thank you. Next witness.

17 MS. ARGENTIERI: The Government calls Kiara
18 Maldonado.

19 KIARA MALDONADO, GOVERNMENT'S WITNESS, SWORN

20 DIRECT EXAMINATION

21 BY MS. ARGENTIERI:

22 Q I'm over here. Okay? Could you state and spell your name
23 for the record?

24 A Kiara , K-I-A-R-A M-A-L-D-O-N-A-D-O.

25 Q Okay. How old are you?

Direct - Maldonado - Argentieri

626

- 1 A Twenty-four.
- 2 Q Where did you grow up?
- 3 A Brooklyn.
- 4 Q Where's your family from?
- 5 A Puerto Rico.
- 6 Q What other languages do you speak?
- 7 A Spanish.
- 8 Q How far did you go in school?
- 9 A Ninth grade.
- 10 Q Do you have kids?
- 11 A Two.
- 12 Q How old are they?
- 13 A Four and one.
- 14 Q Directing your attention to 2013, what happened?
- 15 A I got arrested for possession and intent to sell.
- 16 THE CLERK: Uhn-uh. Can't hear you, Judge.
- 17 THE WITNESS: What? I got arrested for possession
- 18 and intent to sell.
- 19 BY MS. ARGENTIERI:
- 20 Q Did you plead guilty?
- 21 A Yes.
- 22 Q What sentence did you get?
- 23 A A year and a day.
- 24 Q Is it state or federal?
- 25 A State.

Direct - Maldonado - Argentieri

627

1 Q When you got out of jail, did you get arrested again?

2 A Yes.

3 Q For what?

4 A Conspiracy.

5 Q Were you on probation at the time?

6 A Yes.

7 Q When you say conspiracy, what kind of conspiracy?

8 A To distribute.

9 Q Drugs?

10 A Yes.

11 Q What did you do? Did you plead guilty?

12 A Yes.

13 MR. RICCO: Judge, I would object to the leading.

14 THE COURT: How did you plead?

15 THE WITNESS: Guilty.

16 MS. ARGENTIERI: I can rephrase it.

17 BY MS. ARGENTIERI:

18 Q What happened to your case?

19 A I pled guilty. I mean, I --

20 Q I got it. Okay. And was that a state or federal case?

21 A Federal.

22 Q And what were you sentenced to?

23 A Sixteen months.

24 Q And where did you serve your federal sentence, what
25 facilities?

Direct - Maldonado - Argentieri

628

- 1 A MDC.
- 2 Q Were there other facilities as well?
- 3 A Yeah.
- 4 Q When were you incarcerated within the MDC, for what time
- 5 period?
- 6 A October 2015 until December 2015.
- 7 Q And within the MDC what unit were you assigned to?
- 8 A I was in the census unit.
- 9 Q When you say the sentence unit, what does that mean?
- 10 A Like the cadres was there.
- 11 Q So, where sentenced prisoners were?
- 12 A Yeah.
- 13 Q And what if any other unit was there for females at that
- 14 time?
- 15 A Pretrial.
- 16 Q Meaning people who hadn't pled guilty yet?
- 17 A Right. Yeah.
- 18 Q Now, who -- when you were an inmate at the MDC, who was in
- 19 charge of you?
- 20 A I mean, the correction officers. I don't know.
- 21 Q The guards?
- 22 A Yeah.
- 23 Q Okay. And I'm going to show you some photos, okay?
- 24 A Uh-huh.
- 25 Q Let me take a step back. Who were your friends when you

Direct - Maldonado - Argentieri

629

1 were there?

2 A Danilda Osoria, Melva Vasquez.

3 Q Anyone else? Yes, there is someone else, but I -- I know.

4 Have I directed you not to say that person's name?

5 A Yes.

6 Q Okay.

7 MS. ARGENTIERI: Judge, may I approach the witness?

8 I'm showing the witness Government's Exhibit 2A.

9 Oh, I'm sorry. Okay. I'm showing the witness
10 Government Exhibit 2A.

11 BY MS. ARGENTIERI:

12 Q Do you know this person?

13 A Yes.

14 Q Do you know her by the name that's listed under the photo?

15 A Yes.

16 Q Can we agree -- can we agree for the purposes of your
17 testimony here today that we'll refer to her as Maria?

18 A Yes.

19 Q As best you can, okay?

20 A Uh-huh.

21 Q Was Maria one of your friends?

22 A Yes.

23 Q And where did you meet her?

24 A At MDC.

25 Q In the time that you were at the MDC, what if any job did

Direct - Maldonado - Argentieri

630

1 Maria have?

2 A She was a medical porter, which means we clean the second
3 floor, the medical offices, or whatever.

4 Q Now, have you ever been down there?

5 A No.

6 Q And did you ever see her go to clean?

7 A Yeah.

8 Q Who would she go clean with?

9 A Some lady named Odie.

10 Q Can you describe Odie?

11 A She's white, and with glasses and I think gray hair, old
12 lady.

13 Q I'm showing Government Exhibit 8. Who is that?

14 A Odie.

15 Q Now, what language did Maria speak?

16 A Spanish.

17 Q How was her English?

18 A Broken. It was like broken down English. Not really --

19 Q Now, do you speak both languages?

20 A Yeah.

21 Q Showing Government Exhibit 4. Who's that?

22 A That's Danilda Rosario.

23 Q What -- did you have a nickname for her?

24 A Nani.

25 Q Where was she from?

Direct - Maldonado - Argentieri

631

- 1 A D.R.
- 2 Q What languages did she speak?
- 3 A Spanish and English.
- 4 Q What if any job did Nani have?
- 5 A She worked in the mess hall, kitchen.
- 6 Q And when did she work?
- 7 A Nights. From like 8:00 to like 5:00 in the morning, or
- 8 10:00. Around there.
- 9 Q I'm sorry, what time?
- 10 A Like 8:00 to like 5:00 in the morning.
- 11 Q She worked through the night?
- 12 A Yeah.
- 13 Q Did you ever work in the kitchen?
- 14 A No.
- 15 Q Government Exhibit 5. Who's that?
- 16 A That's Melva Vasquez.
- 17 Q And I'm sorry, I should have said for Nani and for Maria,
- 18 were they housed in the same unit as you?
- 19 A Yes.
- 20 Q What about Melva?
- 21 A Yes.
- 22 Q Where is Melva from?
- 23 A D.R.
- 24 Q What languages does she speak?
- 25 A Spanish and broken down English.

Direct - Maldonado - Argentieri

632

1 Q And what if any job did Melva have?

2 A Mess hall, in the kitchen.

3 Q I'm going to show you another picture, Government Exhibit
4 6. Who's that?

5 A Me.

6 Q Did you have a job?

7 A No.

8 Q How come?

9 A Because I was only there for a short time of period.

10 Q Directing your attention to December 2015, do you recall
11 an incident where Maria returned to the unit upset?

12 A Yes.

13 Q Thinking back to that day, what day of the week was it, if
14 you know?

15 A It was a weekend.

16 Q How do you know it was a weekend?

17 A Because we have visits.

18 Q And do you recall if you had a visit that day?

19 A I don't remember.

20 Q What happened?

21 A I mean, when she came in?

22 Q Yeah.

23 A She came in, she called me and told me to come with her to
24 the bathroom, like inside the stall. And then she asked me to
25 come in the stall with her. I told her, no, I didn't like --

Direct - Maldonado - Argentieri

633

1 we didn't want to -- I didn't want to go into the stall with
2 her. And then she told me to go into the other stall. She
3 wanted me -- she wanted me to show her blood on -- she had
4 blood on her panties. I said, I don't want to see that, or
5 whatever. Then she freaked out and said, he's probably
6 watching through the cameras.

7 So she told me to get out and act normal. So I got out of
8 the stall and I acted normal. And then she ran into the shower
9 and --

10 Q Okay. You said quite a lot right there. Let's just back
11 up. So when she first came in what did she look like?

12 A She looked freaked out.

13 Q Okay. And where did she ask you to go?

14 A Into the bathroom with her.

15 Q And was that unusual?

16 A Yeah.

17 Q How come?

18 A Because she's like really private of like her body. She
19 doesn't really change, like outside of the bathroom. She --

20 Q And where did you two go together?

21 A Into the bathroom. To the stalls.

22 Q And you said at first you went in?

23 A Uh-huh.

24 Q And then what happened?

25 A She kicked me out.

Direct - Maldonado - Argentieri

634

- 1 Q And what did she say when she kicked you out?
- 2 A He's probably watching through the cameras.
- 3 Q And who did you think she was referring to?
- 4 A Martinez.
- 5 Q Who is Martinez?
- 6 A He's a lieutenant. He was.
- 7 Q Had you seen him in the unit?
- 8 A A few times.
- 9 Q A few times?
- 10 A Uh-huh.
- 11 Q So, after she kicked you out of the stall, where did you
- 12 go?
- 13 A Back to my bunk, I think.
- 14 Q I think you said you went into the stall next door?
- 15 A Oh, yeah. Uh-huh.
- 16 Q And then what happened when you were in the stall next
- 17 door?
- 18 A She told me to see her, the blood on her panties. I told
- 19 her, no, I didn't want to see it.
- 20 Q What if anything did she say had happened to her?
- 21 A That he penetrated her.
- 22 Q And do you speak -- you said you speak Spanish?
- 23 A Uh-huh.
- 24 Q What words did she use?
- 25 A (In Spanish.)

Direct - Maldonado - Argentieri

635

1 Q And what did you understand had happened?

2 A They had sex.

3 Q I'm going to show you Government Exhibit 104D in evidence.

4 A Uh-huh.

5 Q What is that a picture of?

6 A The bathrooms and the showers.

7 Q And can you just sort of point out where approximately you
8 guys went in?

9 A Right there.

10 Q So is it the second row, those are the showers back there?

11 A Yeah.

12 Q It's not the doorway that this mark is on, correct?

13 A No, it's right here.

14 Q So indicating, for the record, the stalls to the left of
15 the door in the center of the photo.

16 Now after that, you said you went back to your bed?

17 A Uh-huh.

18 Q When, if ever, did you talk about it again?

19 A Second shift. Like around, after 4:00.

20 Q Was that after -- after what?

21 A After he left from his first shift.

22 Q Okay.

23 A The second shift.

24 Q What happens in the prison between 3:00 and 4:00?

25 A It's count time.

Direct - Maldonado - Argentieri

636

- 1 Q Okay. So what happens during count time?
- 2 A They come to see if the inmates are all there.
- 3 Q And then after that you have some free time again?
- 4 A Yeah.
- 5 Q Okay. So what happened after count time?
- 6 A Me, her, and Nani met up at the -- in Nani's bunk bed, and
- 7 started talking about it.
- 8 Q Now, why would you guys meet at Nani's bed?
- 9 A Because she was the only one that had a bottom bunk.
- 10 Everybody else had a top bunk.
- 11 Q And when you got there, how did Maria look?
- 12 A She was sad.
- 13 Q What was she doing?
- 14 A As she's -- she started telling the story and as she got
- 15 deeper into the story she started crying a lot.
- 16 Q And what did she tell you happened?
- 17 A She told me that she gave him oral sex. He grabbed her,
- 18 and he penetrated her.
- 19 Q And what was your reaction to that?
- 20 A I thought it was funny at first, but then as she started
- 21 like telling the story she started like really crying and
- 22 stuff, so I felt bad after.
- 23 Q What if anything did Maria tell you she was worried about?
- 24 A Getting in trouble.
- 25 Q Of what?

Direct - Maldonado - Argentieri

637

1 A Of doing that because he said that he'll give her -- he'll
2 take her to the SHU and give her more time.

3 Q Who said that?

4 A Martinez.

5 Q And when did she tell you that?

6 A The next day. She told me not to tell anybody.

7 Q Okay. Let's just stick with the first day.

8 A Uh-huh.

9 Q When you were talking on Nani's bed, what if anything did
10 Maria tell you that Martinez was going to bring her?

11 A To the SHU.

12 Q Okay.

13 A Oh, the Plan B.

14 Q What did she tell you?

15 A That he was going to bring her a Plan B on 3rd shift.

16 Q Okay. And what is the Plan B?

17 THE COURT: I didn't get that. Can you repeat it?

18 THE CLERK: Judge, judge.

19 THE COURT: Can you repeat what you just said? I
20 didn't hear it.

21 THE WITNESS: Oh, she said he was going to bring her
22 a Plan B.

23 BY MS. ARGENTIERI:

24 Q And did you know what that was?

25 A A pill so you wouldn't get pregnant.

Direct - Maldonado - Argentieri

638

1 Q Okay. And so later that night, what did you do?

2 A I sat on my top bunk and waited to see if he was going to
3 come bring it.

4 Q Why did you do that?

5 A I was being nosey.

6 Q Okay. I'm going to show you Government Exhibit 104B in
7 evidence. What is this a picture of?

8 A The bunks.

9 Q And I'm sorry, the bunks where?

10 A Where we sleep at.

11 Q In your unit?

12 A In my unit, yeah.

13 Q So approximately where was your bed when you were in the
14 MDC?

15 A In the front row, right there.

16 Q Indicating for the record, the row all the way to the
17 right. And did you have a top or bottom bunk?

18 A Top bunk.

19 Q And what if anything did you observe later that night?

20 A I saw him bring her the pill.

21 Q Well, what exactly did you see?

22 A He, he came in, he called her, her name, and then she got
23 off her bunk, because we was on recall, and she went and
24 grabbed it and then she went to the sink.

25 Q Now, when you say, he called her name, I'm going to show

Direct - Maldonado - Argentieri

639

1 you Government Exhibit 104C. Where was Martinez when he called
2 her name?

3 A Like, around here.

4 Q I'm sorry. I had two marks on there. Could you mark it
5 again?

6 A Like around here.

7 Q And where does that door go?

8 A That's the exit.

9 Q Okay.

10 A I mean, where you come in and you go out.

11 MS. ARGENTIERI: And so, the witness is indicating
12 with a mark, the door at the center of Government Exhibit 104C.

13 BY MS. ARGENTIERI:

14 Q And after he came in, what happened next?

15 A He called her name, and she came to him, and he handed her
16 the pill.

17 Q And when he called her name, what name did he use? Don't
18 say the name. Was it the first name or the last name?

19 A Last name.

20 Q And then what -- where did Maria go?

21 A Huh?

22 Q Where did you see Maria go?

23 A She went to him.

24 Q And then what could you see from where you were?

25 A He handed her something.

Direct - Maldonado - Argentieri

640

1 Q And you couldn't see exactly what it was?

2 A No.

3 Q Now, you said the next day, you had a conversation with
4 Maria.

5 A Uh-huh.

6 Q And what did she ask you not to do?

7 A Not to tell anybody.

8 Q And what did she say to you?

9 A That, not to tell anybody because he said he'll take her
10 to the SHU or -- and give her more time.

11 Q And what was the SHU?

12 A Solitary confinement.

13 Q Have you ever been there yourself?

14 A No.

15 Q How long after this incident did you leave the MDC?

16 A Like two weeks later.

17 Q Before you left, what if any change did you notice in
18 Maria?

19 A She wasn't hanging out with us like that, she wasn't
20 socializing and she didn't want to go to work. She was always
21 in bed.

22 Q After you left MDC, did you stay in touch with Maria?

23 A No.

24 Q When is the first time you told anyone what happened with
25 Maria?

Direct-Maldonado-Argentieri/ Cross-Maldonado-Ricco

641

1 A When the agents came to my house.

2 Q And at that time, were you home?

3 A Yeah.

4 Q After you found out you would have to testify here today,
5 how did you feel?

6 A I was upset.

7 Q What did you do?

8 A I called Maria and I started bugging out on her.

9 Q Bugging out, like yelling?

10 A Yeah.

11 Q Do you want to be here today?

12 A No.

13 Q What if any benefit are you receiving from testifying here
14 today?

15 A Nothing.

16 MS. ARGENTIERI: No further questions.

17 CROSS-EXAMINATION

18 BY MR. RICCO:

19 Q Ms. Maldonado, are you on supervised release?

20 A Yes.

21 Q And if you were to testify falsely here, it would violate
22 your supervised release. Isn't that correct?

23 A Yes.

24 Q Back to jail, right?

25 A Right. Uh-huh.

Cross - Maldonado - Ricco

642

1 Q First question I want to ask you -- well, third question.
2 You met with the agents. You just told us, they came and spoke
3 to you, right?

4 A Uh-huh.

5 Q That a yes?

6 A Yes.

7 Q And what you told them was that Maria flirted with a male
8 correction officer. Isn't that correct?

9 A Yes.

10 Q And you say -- you also said that Maria told you that she
11 gave him oral sex. Right?

12 A Yes.

13 Q And then the correction officer penetrated her on the desk
14 and the chair in the lieutenant's office, right?

15 A Yes.

16 Q That's what you told the agents when they came to see you,
17 right?

18 A Yes.

19 Q You're on supervised release, right?

20 A Right.

21 Q You've got to tell the truth, right?

22 A Right.

23 Q The events that she told you about, you wasn't present for
24 them, were you?

25 A Nope.

Cross - Maldonado - Ricco

643

1 Q And this Plan B pill, that's what Maria called it, right?

2 A Yes.

3 Q Okay.

4 MR. RICCO: I'm sorry, Judge. Excuse me.

5 (Pause.)

6 BY MR. RICCO:

7 Q When you were on the unit -- when you were in the unit,
8 you saw Lt. Martinez hand something to Maria, correct?

9 A Yes. Uh-huh.

10 Q At the time he handed the thing to her, you didn't know
11 what it was, right?

12 A I'm pretty sure it was the Plan B pill.

13 Q That wasn't my question. My question was, you didn't know
14 what it was when he handed it to her.

15 A No.

16 Q But afterwards, she told you what it was, right?

17 A Right.

18 Q She told you it was a Plan B pill, right?

19 A Right.

20 Q And you know what a Plan B pill is, right?

21 A Yes.

22 Q And when she said to you it was a Plan B pill, did she say
23 it to you in a broken English, or did she say Plan B in
24 Spanish?

25 A Plan B in Spanish.

Cross - Maldonado - Ricco

644

- 1 Q How do you say Plan B in Spanish?
- 2 A (In Spanish.) The pill. It's not like the --
- 3 Q How do you say the word plan in Spanish?
- 4 A (In Spanish.) But you don't say it like that, like --
- 5 Q How do you say -- now, McDonalds is a restaurant, right?
- 6 A Uh-huh.
- 7 Q Chevy is a car, right?
- 8 A Right.
- 9 Q Is it McDonalds in Spanish?
- 10 A McDonald. Yeah, that's how. I mean, it's how their --
- 11 Q And Plan B is the same in Spanish and English, isn't it?
- 12 A Plan B. Okay.
- 13 Q I'm going to show you Government's 240 for identification.
- 14 Let's take a look at it.
- 15 By the way, do you know what it means to have like a brand
- 16 name? Like Adidas, Nike. Right?
- 17 A Uh-huh.
- 18 Q Those are brand names, right?
- 19 A Right.
- 20 Q Plan B is a brand name isn't it? That's a yes or no.
- 21 A Yes.
- 22 Q Okay. Now, just a couple questions and I'm through. How
- 23 old did you say that you are today?
- 24 A What?
- 25 Q How old. How old are you today?

Cross - Maldonado - Ricco

645

- 1 A Twenty-four.
- 2 Q You told us you have two children.
- 3 A Yes.
- 4 Q Right? You have a four-year-old and a one-year-old.
- 5 A Yes.
- 6 Q You're a mom.
- 7 A Yes.
- 8 Q You told the jury that you were involved in a state drug
- 9 case, right?
- 10 A Right.
- 11 Q You did a year and a day.
- 12 A Right.
- 13 Q You did that on Riker's Island.
- 14 A No.
- 15 Q Where did you do it?
- 16 A Albany County, Bedford and Albion.
- 17 Q Okay. And then they -- you were put on probation?
- 18 A Parole.
- 19 Q From that state thing?
- 20 A Right.
- 21 Q You violate parole?
- 22 A Yeah.
- 23 Q Selling drugs again?
- 24 A Yeah. Uh-huh.
- 25 Q And that got you into federal court.

Cross - Maldonado - Ricco

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1 A Right.

2 Q When you were arrested you were facing a mandatory minimum
3 of five years, right?

4 A Right.

5 Q You got less than that.

6 A Right.

7 Q Okay. You did your time, right?

8 A Right.

9 Q Enough. Okay?

10 A All right.

11 MS. ARGENTIERI: No further questions.

12 THE WITNESS: Uh-huh.

13 THE COURT: You can step down.

14 (Witness excused.)

15 THE CLERK: Your next witness, counsel?

16 MS. ARGENTIERI: The Government calls Dr. Vapnek.

17 THE COURT: Will you raise your right hand?

18 JONATHAN VAPNEK, GOVERNMENT'S WITNESS, SWORN

19 MS. ARGENTIERI: May I, Judge?

20 THE COURT: Sure.

21 DIRECT EXAMINATION

22 BY MS. ARGENTIERI:

23 Q Doctor, can you state and spell your name for the record?

24 A Jonathan Vapnek. V like Victor, A like apple, P like
25 Paul, N like Nancy, E like Edward, K like Kenneth.

Direct - Vapnek - Argentieri

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1 Q Where do you work?

2 A My office is on the upper east side of Manhattan at 229
3 East 79th Street.

4 Q Are you also associated with the hospital?

5 A I am a clinical associate professor of urology at the
6 Mount Sinai Hospital.

7 Q What kind of doctor are you?

8 A I'm a urologist.

9 Q Are you a practicing urologist?

10 A I am.

11 Q What education and training do you have?

12 A I went to undergraduate at Yale University, graduated
13 1982, got my MD at University of California, San Diego, started
14 my residence in San Diego, and then completed four years of
15 urology at University of California, San Francisco, and then
16 did a one-year fellowship at University of California, Davis,
17 and then came to New York in 1993.

18 Q And what happened in 1993?

19 A I got stuck here in New York. I took a job at the Lt.
20 Metzger. Sinai Hospital as assistant professor of urology, and
21 I worked for the hospital as an academic urologist until 2002,
22 when I left the hospital to set out on my own.

23 Q And have you been practicing since then?

24 A I have.

25 Q What is urology?

Direct - Vapnek - Argentieri

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1 A Urology is a surgical sub-specialty that deals with
2 diseases of the urinary tract and genital tract, so that would
3 cover kidneys, ureters, bladder, prostate. We deal with sexual
4 dysfunction, kidney stones, tumors. It's a pretty broad and I
5 consider it fairly interesting specialty.

6 Q Have you performed vasectomies?

7 A I perform vasectomies frequently.

8 Q How many of them?

9 A Hundreds of them over the last 25 years.

10 Q And have you testified in court before?

11 A I have.

12 Q How many times?

13 A Fifty plus.

14 Q Have you been qualified as an expert?

15 A I have.

16 Q In urology and medicine?

17 A Yes.

18 MS. ARGENTIERI: Judge, I move to qualify Dr. Vapnek
19 as an expert in the field of medicine, with a specialty in
20 urology.

21 MR. RICCO: Without objection.

22 THE COURT: It's up to the jury to draw some
23 conclusion about his expertise and what weight to attach to it.
24 Go ahead.

25 BY MS. ARGENTIERI:

Direct - Vapnek - Argentieri

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1 Q What is a vasectomy?

2 A A vasectomy is a minor surgical procedure that is used to
3 achieve permanent sterilization in a man.

4 Q How is it done?

5 A There are several different surgical options, but it
6 involves puncturing the skin and dividing the vas, plural of
7 vas is vasa, so dividing the vasa deferentia, which is the vas
8 deferens on either side, which thereby prevents the sperm from
9 traveling up from the testicle to the outside world.

10 Q Now, even though an individual has had a vasectomy, do
11 they still ejaculate?

12 A They still ejaculate, they still have normal sexual
13 function. Erections are unchanged. In fact, the semen is
14 virtually unchanged with the exception of the fact that there's
15 no more sperm.

16 Q I'm going to show just the witness Government Exhibit 215.
17 Have you had the opportunity to review these records?

18 A I have.

19 Q And who are these records for?

20 A These are records from Maimonides Medical Center
21 concerning Carlos Martinez, date of birth, November 3rd of
22 1969.

23 MS. ARGENTIERI: Judge, I offer Government Exhibit
24 215.

25 MR. RICCO: Without objection, Your Honor.

Direct - Vapnek - Argentieri

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1 THE COURT: It's admitted.

2 (Government Exhibit No. 215 received in evidence.)

3 MS. ARGENTIERI: And I move to publish it.

4 THE COURT: Go ahead.

5 BY MS. ARGENTIERI:

6 Q So you said that these were the medical records, or
7 certain medical records for Carlos Martinez?

8 A Yes.

9 Q And you've had the opportunity to review them?

10 A I have.

11 Q Now, what do these records indicate about what procedure
12 Martinez underwent in August of 2013?

13 A These records are an ambulatory surgical admission from
14 Maimonides Medical Center for the purpose of undergoing a
15 bilateral vasectomy in the operating room.

16 Q And was such a surgery performed?

17 A It was.

18 Q And have you -- you read the records to see that it was
19 uncomplicated?

20 A Correct.

21 Q And how was it done, in-patient or out-patient?

22 A It was ambulatory, meaning he came in, had the procedure
23 done. I think it took about 30 minutes. And then after going
24 to the recovery room, he was sent home.

25 Q And what does it mean to be uncomplicated?

Direct - Vapnek - Argentieri

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1 A Uncomplicated means that it was straight forward, that it
2 was successful, and there was no bleeding or infection, or any
3 of the other, you know, relatively rare complications that
4 might occur afterwards.

5 Q Now, after having a vasectomy, is it foolproof?

6 A It's not foolproof. It's about 99.99 percent successful.
7 There are occasional patients in whom it does not seem to work
8 properly. In this case, there is a pathology report
9 demonstrating that there was tissue from both sides, indicating
10 that it was done properly on the right side and the left side.

11 Q Okay. I'm going to switch gears for a second. What is
12 the vulva?

13 A Vulva is the technical term for the external female
14 genitalia.

15 Q And does it refer to the vaginal opening, or outside the
16 vaginal opening?

17 A It's the outside vaginal opening. The labia, the mons,
18 labia minora, labia majora, the outside part.

19 Q I'm going to switch gears one more time. What is the Plan
20 B pill?

21 A Plan B pill is a higher dose of standard oral
22 contraceptive called levonorgestrel, 1.5 milligrams. It is
23 used, if it's used properly within 72 hours of intercourse, it
24 is about 88 percent successful in preventing pregnancy.

25 Q And is that something that can be distributed over-the-

Cross - Vapnek - Ricco

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1 counter?

2 A It is, actually.

3 MS. ARGENTIERI: No further questions.

4 CROSS-EXAMINATION

5 BY MR. RICCO:

6 Q Good afternoon, Doctor.

7 A Good afternoon.

8 Q The Plan B pill that you just described, that's a brand
9 name, isn't it?

10 A Correct.

11 Q And it's like Motrin is ibuprofen, but people call it
12 Motrin. That's the product brand, right?

13 A That's right.

14 Q And so when we, when people use the word Plan B, they're
15 talking about an item that's sold as Plan B, right?

16 A Correct.

17 Q And have you ever seen the packaging for that before?

18 A I've never bought one personally. I've seen them on the
19 shelf.

20 Q All right. I didn't mean that you go in person. I'm
21 going to show you for identification purposes, Government's
22 Exhibit 240. And just take -- Plan B, right?

23 A Yes.

24 Q Okay. How many years you been at Mount Sinai?

25 A Twenty-four --

Direct - Smith - Shihata

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1 Q Are you familiar --

2 A -- and a half.

3 Q Are you familiar with Dr. Ernest Benjamin?

4 A The ICU guy?

5 Q ICU guy.

6 A Yes.

7 MR. RICCO: No further questions. Thank you very
8 much.

9 THE COURT: Do you have anything more?
10 (No audible response.)

11 THE COURT: Thank you, Doctor. Thank you, Doctor.
12 You can step down.

13 THE CLERK: You can step down, Doctor. Thank you.
14 (Witness excused.)

15 THE CLERK: Next witness.

16 MS. SHIHATA: Government calls D'Anello Smith.

17 D'ANELLO SMITH, GOVERNMENT'S WITNESS, SWORN

18 DIRECT EXAMINATION

19 BY MS. SHIHATA:

20 Q Good afternoon.

21 A Good afternoon.

22 Q Can you see over here? Okay.

23 Could you please state and spell your name for the record?

24 A My name is D-A-N-E-L-L-O S-M-I-T-H, Smith.

25 Q And, Mr. Smith, how old are you?

Direct - Smith - Shihata

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- 1 A Forty-nine.
- 2 Q Where were you born?
- 3 A Panama City, Panama.
- 4 Q Do you speak any languages other than English?
- 5 A Yes, Spanish.
- 6 Q And do you speak Spanish fluently?
- 7 A That's correct.
- 8 Q Around when did you come to the United States?
- 9 A I believe March 31st, 1986.
- 10 Q And about how old were you at that time?
- 11 A Seventeen.
- 12 Q How far did you go in school?
- 13 A About approximately three years in college, but I did not
- 14 complete it.
- 15 Q And after school did you -- after leaving school, did you
- 16 get a job?
- 17 A Yes, ma'am.
- 18 Q Where did you work?
- 19 A I believe at the time I worked at the New York Marriott
- 20 Marquis.
- 21 Q And how long did you do that for?
- 22 A Did it for approximately five years, I believe it was.
- 23 Q And what were you doing there?
- 24 A I was part of their loss prevention and safety team.
- 25 Q Where, if anywhere, did you work next?

Direct - Smith - Shihata

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1 A Prior to -- after the Marriott, I came straight to the
2 Bureau of Prison.

3 Q And when did you start working at the Bureau of Prisons?

4 A May 2002.

5 Q And is that the Federal Bureau of Prisons?

6 A Federal Bureau of Prison, ma'am.

7 Q And what if any facility were you assigned to?

8 A The Metropolitan Detention in Brooklyn Park Slope.

9 Q Is that also known as the --

10 A Sunset Park. Correct.

11 Q Sorry.

12 A Sunset Park.

13 Q It's located in Sunset Park, Brooklyn?

14 A That's correct, ma'am.

15 Q And is it also known as the MDC?

16 A Yes.

17 Q And is the MDC a federal prison?

18 A Yes.

19 Q And what was your job title when you first started working
20 at the MDC?

21 A I was a correction officer, ma'am.

22 Q And about how long did you have that title?

23 A Approximately four years.

24 Q Were you promoted after that?

25 A Yes, ma'am.

Direct - Smith - Shihata

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1 Q To what?

2 A Senior Officer Specialist.

3 Q And around when did you become a Senior Officer
4 Specialist?

5 A Approximately May of 2006.

6 Q And is that your current job title?

7 A Yes, ma'am.

8 Q Now, so have you worked for the Federal Bureau of Prisons,
9 and specifically the MDC, for approximately 16 years? Is that
10 correct?

11 A Yes.

12 Q And based on your 16 years of experience as an officer at
13 the MDC, what is the most important responsibility of a
14 corrections officer?

15 A Care and custody of a -- inmates.

16 Q Now, what are your job responsibilities as a Senior
17 Officer Specialist?

18 A As a Senior Officer Specialist my job responsibility is
19 pretty much an extension of the activities lieutenant. My
20 responsibilities are to assist in all aspect of functionality
21 of the job. You respond to emergencies, train junior officers
22 or newer officers entering the facilities.

23 Q You used the term, activities lieutenant. What is that?

24 A Activity lieutenant works under the operation of
25 lieutenant, ma'am.

Direct - Smith - Shihata

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1 Q And --

2 A Pretty much he assists the operation lieutenants who is in
3 charge of running the facility or the institution.

4 Q Okay. And are operations lieutenants and activities
5 lieutenants, are lieutenants on staff assigned to those
6 positions on a particular day or quarter?

7 A Yes.

8 Q And are you familiar with the term east activities
9 lieutenant?

10 A Yes.

11 Q What does that refer to?

12 A East activity lieutenant is, he pretty much works in a
13 different section of the building. The MDC Brooklyn is
14 comprised of two buildings, the east building and the west
15 building. The east activity would be assigned, east activity
16 lieutenant would be assigned to the east building.

17 Q Now, in your job responsibilities as Senior Officer
18 Specialist, have you ever worked as what's known as an internal
19 officer?

20 A Yes, ma'am.

21 Q And what is an internal officer?

22 A An internal officer is an officer whose primary assignment
23 is to patrol throughout the institution. It's to detect,
24 deter, and respond to whatever incident or emergency that may
25 occur throughout the institution, as well as to assist officers

Direct - Smith - Shihata

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1 in their training, new officers in their training throughout
2 the day.

3 Q Okay. And is the internal officer also responsible at
4 some points for transporting inmates within and outside the
5 institution?

6 A That's correct.

7 Q Now, you mention that part of your job responsibilities
8 includes assisting in the training of new officers at the MDC.
9 Is that correct?

10 A That's correct, ma'am.

11 Q And do all new officers at the MDC receive training when
12 they start?

13 A Yes, ma'am.

14 Q What type of training?

15 A Training primarily in the security and custody and care of
16 the inmates that are housed in the facility.

17 Q Are you familiar with the term, PREA?

18 A PREA, yes.

19 Q And what does that stand for?

20 A Prison Elimination Act.

21 Q What does the R stand for, if you know?

22 A PREA -- I don't recall right now. I just --

23 Q Okay. That's fine.

24 A -- blank out. Sorry.

25 Q That's all right. Does the training for new officers at

Direct - Smith - Shihata

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1 the MDC, does it include training on PREA?

2 A Yes.

3 Q And have you, yourself, taken that training?

4 A Yes.

5 Q Do all staff members at the MDC take it?

6 A They should.

7 Q Is it a requirement?

8 A It is a requirement, ma'am.

9 Q And based on having taken that training, what is the main
10 message of the PREA training?

11 A The main message of the PREA training is to prevent,
12 deter, and assist with inmates that are being forced into
13 sexual act or being attacked in a sexual manner.

14 Q And with respect to the behavior of staff members, what is
15 the main message?

16 A It, it also applies to staff members.

17 Q And does it only apply to forced conduct?

18 A No, not necessarily. All aspect of sexual contact with
19 inmates.

20 Q So any type of --

21 A Or --

22 Q -- sexual contact between a staff member and an inmate is
23 prohibited?

24 A It is prohibited. That, that's something that you are
25 taught when you first get assigned or hired.

Direct - Smith - Shihata

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1 Q And are you also taught that it's a crime?

2 A Yes, ma'am.

3 Q Any type of contact.

4 A Any type of contact.

5 Q Sexual contact.

6 A Sexual contact.

7 Q Now, what is the hierarchy at the MDC?

8 A The hierarchy at MDC Brooklyn is comprised of the warden,
9 associate warden, the captain, lieutenant, activities
10 lieutenant, senior officer specialist, the corrections officer.

11 Q And I think as you testified earlier, operations
12 lieutenant and activities lieutenant, are those -- is it the
13 same set of lieutenants that fill those positions just
14 depending on the quarter?

15 A Yes.

16 Q For the shift?

17 A For the shift, correct.

18 Q Now as a senior officer specialist, who do you report to?

19 A I report to lieutenant, operations lieutenant.

20 Q And if you're assisting an activities lieutenant, who do
21 you report to?

22 A I report to that, to that lieutenant as well, the
23 assisting lieutenant, the activities lieutenant.

24 Q Now, you mention that the MDC has an east building and a
25 west building, correct?

Direct - Smith - Shihata

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1 A That's correct.

2 Q How, if at all, are those buildings connected?

3 A It is connected through a, a link or a tunnel like channel
4 that connects you from between the two buildings, that connects
5 two buildings.

6 Q Okay. And so can you get from one building to the other
7 without going outside?

8 A That's correct.

9 Q Are you familiar with the term, SENTRY?

10 A Yes, ma'am.

11 Q What is SENTRY?

12 A SENTRY is a program that allows you to look up certain
13 information about an inmate.

14 Q And what type of information about an inmate does SENTRY
15 have?

16 A The information varies, depending on what you're looking
17 for. But it has information such as the crime they committed,
18 their time in prison, what other facility has they been to,
19 whether or not they has a detainer, where they live,
20 information of that sort.

21 Q Okay. And does it include a projected release date?

22 A Yes.

23 Q You mentioned the word detainer. What did you mean by
24 that?

25 A A detainer is a -- it's the -- it's when the prisoner has

Direct - Smith - Shihata

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1 a, a stop-order from another agency.

2 Q Okay. And what types of other agencies could that be?

3 A It could vary. I believe anywhere from Customs, INS.

4 Q Okay. By INS, do you mean --

5 THE COURT: By a stop -- what do you mean by a stop-
6 order?

7 THE WITNESS: I believe once they get released from
8 our custody they will need to respond to that agency
9 requesting.

10 BY MS. SHIHATA:

11 Q And by INS, did you mean Immigration?

12 A Immigration.

13 Q Now, at the MDC, can inmates receive phone calls?

14 A No.

15 Q Can inmates make phone calls?

16 A Yes.

17 Q And how does an inmate make a phone call at the MDC?

18 A It is made through a system, which once the inmate enter
19 the institution, they are assigned a counselor. The counselor
20 assists them with building a phone list in which those people
21 that the inmates wishes to call a place on that list after they
22 then check and receive authorization from the counselor.

23 Q Okay. And when an inmate makes a call, do they have to
24 pay for the calls they make? If you know?

25 A I don't recall that answer. I cannot give you an answer

Direct - Smith - Shihata

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1 on that, ma'am. I don't recall.

2 Q That's fine. Now are inmate phone calls recorded?

3 A Yes, I believe they do.

4 Q And are the people on the phone call informed that the
5 call is being recorded?

6 A Yes.

7 Q Now, directing your attention to 2015 and 2016, at that --
8 in those years, did the MDC house female prisoners?

9 A Yes.

10 Q And how many units were there for female prisoners at that
11 time?

12 A Two.

13 Q And were those units 6 North and 6 South?

14 A Correct.

15 Q And which of the MDC's two buildings were those units in?

16 A They were housed in the east building.

17 Q And was there any difference between the types of
18 prisoners housed in each unit?

19 A I believe at the time we had pretrialers, and sentence
20 inmate.

21 Q And were the sentenced inmates in Unit 6 South?

22 A That's correct.

23 Q And was Unit 6 North mostly pretrial inmates?

24 A That is correct.

25 Q Now, you testified about the term, internal officer. Are

Direct - Smith - Shihata

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1 you familiar with the term, east internal officer?

2 A Yes.

3 Q And what does that mean?

4 A That's the -- that assignment consists of working
5 throughout the east building assisting the lieutenant in
6 carrying out the tasks throughout that east side building.

7 Q Okay. And is that assisting the east activities
8 lieutenant?

9 A Yes.

10 Q Now, directing your attention to the time period between
11 July 2015, and December 2016, were you assigned, ever, as the
12 east internal officer during that time period?

13 A Yes.

14 Q And who did you report to as the east internal officer?

15 A To the activities lieutenant.

16 Q In the east building?

17 A In the east building.

18 Q And in that time period, when you worked as east internal
19 officer, do you recall what shift you worked?

20 A Yes.

21 Q What shift did --

22 A Day watch, which is 8:00 to 4:00.

23 Q 8:00 a.m. to 4:00 p.m.?

24 A 8:00 a.m. to 4:00 p.m.

25 Q And is that referred to at the MDC as Day Watch 4?

Direct - Smith - Shihata

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1 A Yes.

2 Q Now, who are some of the east activities lieutenants that
3 you worked for as an east internal officer during this time
4 period?

5 A During that time period I worked for Lt. Almo, Lt. Frank
6 Maldonado, I worked for Lt. Tesso, and I worked for Lt. Carlos
7 Martinez.

8 Q And do you see Lt. Carlos Martinez in the courtroom here
9 today?

10 A Yes.

11 Q Can you please identify him by an item of clothing that
12 he's wearing?

13 A He's the gentleman sitting at the table to my far right,
14 wearing a blue suit, white shirt.

15 MS. SHIHATA: Indicating the defendant, Your Honor?

16 THE COURT: Yes.

17 BY MS. SHIHATA:

18 Q Now did female inmates at the MDC have jobs in 2015 and
19 2016?

20 A Yes.

21 Q And what types of jobs did the sentenced female prisoners
22 have?

23 A The assignment varies. It could be -- but mostly consists
24 of cleaning assignments.

25 Q Okay. And any other assignments that you recall?

Direct - Smith - Shihata

666

1 A Cleaning various areas of the East Building, whether it's
2 the visiting room or the second floor or their unit area --

3 Q At that --

4 A -- where there was housing.

5 THE COURT: Are we going over stuff that's just
6 simply cumulative now that we've heard already?

7 MS. SHIHATA: Judge, I have one more question on this
8 particular part of it.

9 THE COURT: Okay.

10 MS. SHIHATA: Okay.

11 BY MS. SHIHATA:

12 Q Were there also female inmates that worked in the kitchen
13 in that time period?

14 A I believe they did.

15 Q Now you indicated that the inmates who cleaned -- you said
16 they cleaned on the second floor and did you say visitors?

17 A The visiting -- the visiting room which is the area in
18 which they do -- they conduct their visiting.

19 Q Okay. And what is located on the second floor of the East
20 Building?

21 A The East Building, what's located up there is the computer
22 services, medical, dental, chaplain.

23 Q Is the lieutenant's office --

24 A Legal.

25 Q Sorry.

Direct - Smith - Shihata

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1 A And the lieutenant's office.

2 Q And was one of the areas that female inmates cleaned in
3 2015 and 2016 the lieutenant's office area?

4 A Yes.

5 Q Now when you worked as East Internal Officer, did you have
6 a particular place where you were based?

7 A No, I did not.

8 Q Can you describe how it worked? What happened when you
9 would show up to work?

10 A Yes. When you -- when I show up to work, I report to the
11 lieutenant. Either if I'm working on the east side, I would
12 report to the activities lieutenant, that's on the second
13 floor. Then I would carry out my assignment throughout the
14 institution.

15 Q And when you would report to the East Activities
16 Lieutenant, where physically would you report to?

17 A I would physically report to the second floor lieutenant's
18 office area.

19 Q Now in the time period we were talking about in 2015 and
20 2016 when you worked as an East Internal Officer, did you ever
21 escort female inmates to clean the second floor?

22 A Yes.

23 Q And does that include the lieutenant's office area?

24 A Yes.

25 Q Do you recall who you escorted to clean the second floor

Direct - Smith - Shihata

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1 during that time period?

2 A I remember what they look like. I cannot remember their
3 names.

4 Q Okay. How many prisoners are you specifically thinking of
5 at this time?

6 A Two.

7 Q Can you describe them?

8 A One was an older Hispanic lady and the other was a younger
9 Hispanic lady.

10 Q I'm showing you what's in evidence as Government's Exhibit
11 8, do you recognize this, the person in this photograph?

12 A Yes.

13 Q And who is this?

14 A This is the older Hispanic lady that I escorted down for
15 cleaning assignments.

16 Q And I'm showing you what's in evidence as Government
17 Exhibit 2, do you recognize the person in this photo?

18 A Yes. That is the younger Hispanic lady that I escorted
19 down for cleaning detail as well.

20 Q And when you would escort these women to the second floor
21 to clean, who was responsible for supervising them when they
22 cleaned?

23 A It varies. If I would not have an immediate assignment, I
24 would do it myself. If I had an assignment to do, I would
25 leave them in the custody of whoever's present at the time.

Direct - Smith - Shihata

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1 That could be the other -- another officer or the lieutenant
2 that may be around.

3 Q Okay. And so fair to say from your testimony that there
4 were times when you stayed and supervised the cleaning of these
5 women?

6 A Yes.

7 Q And do you know one way or another whether other officers
8 assigned as East Internal Officers did the same?

9 A They are supposed to. I cannot speak for them, but they
10 were supposed to supervise them if they were cleaning.

11 Q Okay. And you said you would supervise them unless what?

12 A Unless I had another assignment. Because as an internal
13 officer, you're not pretty much -- you're not supposed to be
14 bound or assigned to a specific location. You have to be free
15 to assist to any emergency that there may be. So you cannot
16 lock yourself in in certain assignments.

17 Q Okay. And do you have other responsibilities, not just
18 assisting with emergencies that come up?

19 A Yes, ma'am. I had area patrol. I had paperwork. I had
20 to take inmates from the East Building to the West, or from
21 West to East. There were other assignments involved in which I
22 did.

23 Q Now looking at Government Exhibit 2 again, about how many
24 times, to the best of your recollection, do you think you
25 escorted this inmate to clean the second floor area?

Direct - Smith - Shihata

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1 A I would say within in the two years that I -- within 2015-
2 16, approximately ten times. Approximately ten times for
3 various lieutenants.

4 Q For various what?

5 A Other lieutenants.

6 Q Lieutenants. Okay.

7 A Yes.

8 Q And about how many times do you think you escorted this
9 inmate to clean for Lt. Martinez, approximately?

10 A Approximately? I would say approximately maybe three or
11 four times. Approximately.

12 Q And were there times when you were there supervising her
13 cleaning?

14 A Yes.

15 Q And what kind of worker was she?

16 A Based on my observation, she -- she wasn't that -- she did
17 -- she wasn't talkative. She came down. She did what she was
18 ordered to do. She did her assignment. And there wasn't much
19 talking, much of anything. She just came down and did what she
20 was, you know, assigned to do.

21 Q Did she cause any problems when you were down there with
22 her?

23 A To my knowledge, no.

24 Q Are you familiar with -- are you familiar with something
25 called TruScope?

Direct - Smith - Shihata

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1 A Yes.

2 Q What is TruScope?

3 A TruScope is a program that allows the unit officers to
4 record movement of inmates, certain tasks that they carry out
5 throughout the day, throughout the facility.

6 Q And is that a computer system?

7 A Computer system.

8 Q And when you would -- when you worked as an East Internal
9 Officer escorting -- you testified you would escort those two
10 inmates whose pictures you were shown to clean on certain
11 occasions, is that correct?

12 A That's correct.

13 Q And where would you escort them from?

14 A I would escort them from their unit which was located on
15 the sixth floor down to the second floor.

16 Q Okay. And did you log that into TruScope?

17 A No. That was not my assignment. That would have been the
18 assignment of the unit officer to log that.

19 Q Okay. And do you know based on your many years'
20 experience at the MDC, does that always happen, is it always
21 logged?

22 A It's not something that always happened.

23 Q Okay. Now you described the hierarchy of the MDC earlier
24 and you indicated that a lieutenant is your superior or boss,
25 is that correct?

Direct - Smith - Shihata

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1 A That's correct.

2 Q And if a lieutenant assigns you a task to do, is it your
3 responsibility to do it?

4 A Yes.

5 Q And as part of your job responsibilities as East Internal
6 Officer, were you sometimes asked to do tasks by the East
7 Activities Lieutenant?

8 A Yes.

9 Q And did those tasks sometimes require you to go to the
10 West Building?

11 A Yes.

12 Q Now you described in your testimony earlier that there's a
13 pathway between the East and West Building, is that correct?

14 A That's correct.

15 Q Can you just describe are there any doors you have to go
16 through?

17 A Yes.

18 Q Can you just describe for the jury what you mean?

19 A There are approximately six doors that you must cross
20 between East to West Building or from West to East, either way.
21 But there is a lane -- there's approximately three quarters of
22 a half of a city block I would say.

23 Q Okay. And those doors, can you describe them?

24 A They're metal doors. They're operated by the control
25 center who upon recognizing who it is that's activating that

Direct - Smith - Shihata

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1 door system, they would grant you access through the door.

2 Q Okay. And so it's not the case that you yourself can open
3 every single one of those doors to go from East to West and
4 back, is that correct?

5 A That's correct. The doors are controlled by the control
6 center.

7 Q And can that take some time sometimes for them to open the
8 doors for you?

9 A It can, depending on what's happening.

10 Q Now based on your 16 years of experience at the MDC, are
11 there surveillance cameras in various areas in the MDC?

12 A Yes.

13 Q And have you been inside the lieutenant's office?

14 A Yes.

15 Q And to your knowledge, is there a camera inside the
16 lieutenant's office?

17 A No, not to my knowledge.

18 Q Is there a computer on the lieutenant's desk in that
19 office?

20 A Yes.

21 Q And to your knowledge, can camera footage from MDC cameras
22 be viewed on that computer?

23 A Yes.

24 Q By whom?

25 A By lieutenants.

Direct - Smith - Shihata

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- 1 Q Do you as a senior officer specialist have access to those
2 -- to the computer system that allows you to pull up that
3 camera footage on the computer?
- 4 A I did not have access to those computers.
- 5 Q Okay.
- 6 A I do not have access.
- 7 Q You do not?
- 8 A I do not have access.
- 9 Q Okay. Do lieutenants wear any particular type uniform at
10 the MDC?
- 11 A Yes.
- 12 Q And in 2015 and 2016, do you recall what that uniform
13 looked like?
- 14 A Yes.
- 15 Q What did it look like?
- 16 A It was a white shirt, blue tie, blue trousers.
- 17 Q And do lieutenants carry keys?
- 18 A Yes.
- 19 Q Can you explain?
- 20 A They carry keys on their duty belt which is -- usually
21 hang on the right side of your duty belt.
- 22 Q And is it a large set of keys?
- 23 A It is a large set of keys that they carry.
- 24 Q Okay. Like how many you think?
- 25 A Approximately it could be anywhere from 9 to 16 keys.

Direct-Smith-Shihata/Cross-Smith-Ricco

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1 MS. SHIHATA: One moment, Your Honor. No further
2 questions.

3 MR. RICCO: Thank you.

4 MS. SHIHATA: Oh, I'm sorry. I do have one other
5 question. I apologize.

6 MR. RICCO: Go right ahead.

7 BY MS. SHIHATA:

8 Q I'm showing you what's in evidence as Government Exhibit
9 10, do you see that?

10 A Yes.

11 Q Do you recognize the person in this photograph?

12 A Yes. That's Officer King.

13 Q Okay. Do you know his first name?

14 A I do not recall his first name.

15 Q Thank you.

16 A You're welcome.

17 CROSS EXAMINATION

18 BY MR. RICCO:

19 Q Officer Smith, good afternoon.

20 A Good afternoon, sir.

21 Q Okay. Prison Rape Elimination Act.

22 A Yes. Correct.

23 Q The Prison Rape Elimination Act was passed into law to
24 address sexual abuse in prisons and jails, right?

25 A Correct.

Cross - Smith - Ricco

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1 Q It's a comprehensive program, right?

2 A Correct.

3 Q And the goal is to set some mandatory standards for the
4 detection, prevention and punishment of sexual abuse or rape in
5 prison, isn't that right?

6 A That's correct, sir.

7 Q And there is a comprehensive training that every officer
8 goes through, correct?

9 A Correct.

10 Q Including yourself?

11 A Correct.

12 Q You are taught how to detect signs of sexual abuse and
13 rape, isn't that correct?

14 A Correct.

15 Q Because in a prison setting, often times an individual may
16 be afraid to say that he's being stalked or harassed, right?

17 A Correct.

18 Q May be afraid to say -- or she to say she got raped,
19 right?

20 A Correct.

21 Q And so the eyes and ears of this comprehensive program is
22 the staff, right?

23 A Pretty much.

24 Q Now you're a senior officer specialist, isn't that right?

25 A Yes.

Cross - Smith - Ricco

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1 Q And a part of your many job responsibilities is you're one
2 of the people who train the junior officers, isn't that
3 correct?

4 A That's correct.

5 Q Now we are here having a dialog, right, we're in a
6 courtroom?

7 A Yes.

8 Q In a prison, when you're having a dialog with an inmate,
9 it's more than just the words, isn't that right?

10 A I would say so.

11 Q Yeah. You're trying to get a sense of what's happening
12 with the person, do they seem under stress or anything like
13 that, right?

14 A Right.

15 Q Because sexual abuse sometimes has very subtle
16 manifestations, isn't that right?

17 A That is correct.

18 Q And when you were transporting these two women from the --
19 their housing area down to the lieutenant's area, that would
20 take about how long to do that? Depending if the elevator's
21 working right.

22 A I would say approximately two minutes if that.

23 Q Okay. And during that time period, you know, you're
24 engaging them, you're checking them out?

25 A No.

Cross - Smith - Ricco

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1 Q You're not?

2 A I don't know what you mean by --

3 Q No. No. No. Whoa. Whoa. Whoa.

4 A I don't know what you mean by checking them out.

5 Q No. No. No. No. No. I'll rephrase that question.

6 A Please.

7 Q Forgive my slang. You were observing them in the way that
8 you're professionally trained to in the jail?

9 A That's correct.

10 Q You want to make sure they're not transporting anything,
11 right? Right?

12 A Correct.

13 Q You want to make sure that their uniforms are appropriate,
14 right?

15 A That's correct.

16 Q You're also picking up on whether or not there are any
17 stress or apprehension, right?

18 A Yes. More or less. Yes.

19 Q Now when you escorted -- and forgive me for that, I didn't
20 mean that -- when you were escorting these two women
21 downstairs, the older Hispanic woman and the younger Hispanic
22 woman, you're a Spanish speaker, right?

23 A That's correct.

24 Q So if they're speaking amongst each other in Spanish, you
25 can hear them?

Cross - Smith - Ricco

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1 A That's correct.

2 Q Did you ever detect that either one of these women had
3 apprehension about going downstairs?

4 A No.

5 Q And you sometimes would not stay downstairs with them,
6 isn't that correct?

7 A That's correct.

8 Q But you would take them back?

9 A Yes.

10 Q And when you came back to pick them up --

11 MR. RICCO: Sorry.

12 BY MR. RICCO:

13 Q And when you came back to pick them up, on any of the
14 occasions, did you pick up stress or anything like that?

15 A Counselor, I never did.

16 Q Disheveled clothing?

17 A No.

18 Q Any of the tell tale signs that you're trained to detect
19 sexual abuse or rape in prison, did you see any of those
20 present?

21 A I never did, counselor.

22 Q Is that the truth?

23 A That's the truth. I never did.

24 Q No further questions. Thank you -- oh, I do have -- I'm
25 sorry.

Cross - Smith - Ricco

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1 With respect to the telephone calls that are monitored at
2 the jail, any officer can log in and listen to the calls, isn't
3 that correct?

4 A That's correct.

5 Q But when you log in, you leave a fingerprint, right?

6 A That's correct.

7 Q Because, for example, we would be able to tell if you,
8 Officer Smith, listened to a call of a particular inmate?

9 A That is correct.

10 Q There'd be a record of it, right?

11 A Correct.

12 Q And let's say, for example, Lt. Martinez, if he logged
13 into a particular inmate's telephone call, there would be a
14 record of it, right?

15 A There would be a record of that.

16 Q Because each of you have an individual identification
17 number, right?

18 A That's correct.

19 Q How many years did you work with Lt. Martinez?

20 A Approximately 15.

21 Q Respect him?

22 A Respect him.

23 Q Thank you. No further questions.

24 MS. SHIHATA: No further questions.

25 THE COURT: You may step down.

1 THE WITNESS: Thank you, Your Honor.

2 (Witness excused.)

3 THE COURT: I don't know about you, ladies and
4 gentlemen, but I need a brief recess. We'll take a brief
5 recess.

6 THE CLERK: All rise.

7 (Jury exits.)

8 (Recess from 3:20 p.m. to 3:29 p.m.)

9 THE COURT: Mr. Ricco?

10 MR. RICCO: Yes, I'm sorry.

11 THE COURT: I have been somewhat troubled by the in
12 limine ruling that Judge Cogan made with respect to this
13 witness. I don't know.

14 Did we get it on the record when I asked you what
15 this witness was going to testify to?

16 MS. ARGENTIERI: I'm not sure, Judge. Do you want me
17 to make a record?

18 THE COURT: What is she going to testify to so we can
19 just --

20 MS. ARGENTIERI: This witness is going to testify
21 that she had a sexual relationship with the defendant, that he
22 told her -- within the MDC -- that he told her that he wanted
23 to meet in the lieutenant's office because there were no
24 cameras there, and because he could monitor where the people
25 are going from the computer. And the manner in which they had

1 sex corroborates much of what Maria said.

2 For example, he only had sex with her from behind.
3 And he -- and he bent her over. And also the manner in which
4 he had sex when they were in the -- the manner in which they
5 engaged in sexual activity in the MDC, the defendant never took
6 his pants off, but merely unzipped his zipper and took his
7 penis out.

8 And, therefore, we believe it's very corroborative of
9 Maria, and particularly the location and the information about
10 the cameras.

11 THE COURT: Yeah, but, first of all, this is not a
12 prisoner I take it?

13 MS. ARGENTIERI: No, Judge.

14 THE COURT: We heard testimony just now about the
15 cameras and the computer. And Judge Cogan said that this would
16 be indicative of a common plan.

17 I'm not sure what the common plan is. To use -- the
18 fact that the office -- if you wanted
19 -- if you wanted to rape an inmate and you did it in a place
20 where the testimony clearly establishes that there were no
21 cameras, and that there was this computer which told you what
22 was going on, I know I originally had my doubts when I read it,
23 but this is what I meant when I said that I don't like myself
24 in limine rulings before I decide whether to admit or exclude
25 evidence.

1 MS. ARGENTIERI: I'm sorry, Judge.

2 THE COURT: Go ahead.

3 MS. ARGENTIERI: I think it's particularly probative
4 though, Judge, because people have testified about the
5 availability of the computer on the desk to view the hallway.

6 THE COURT: Right.

7 MS. ARGENTIERI: But I think also the fact I think
8 that the defendant would take that chance to be alone that long
9 in the office to do that.

10 Because I'm sure that what we're going to hear is
11 that there were people walking around. He could have gotten
12 caught. Like it never -- he never would have actually used the
13 office for sexual activity, and here is an example of exactly
14 when he did that.

15 THE COURT: Well, are you going to make such an
16 argument?

17 MR. RICCO: No.

18 MS. ARGENTIERI: That's right. And --

19 THE COURT: I mean, I assume that his defense is not
20 going to be that.

21 MS. SHIHATA: Judge.

22 MS. ARGENTIERI: And the only person --

23 THE COURT: I mean the defense is going to be
24 something on the nature of her consent.

25 MS. ARGENTIERI: -- who testified that the defendant

1 used the cameras for that purpose was Maria. Everyone else who
2 testified about that was saying that Maria told them that.
3 This is another witness --

4 THE COURT: I know. But it's not a question of who
5 testified whether Maria told them that. It's obvious that the
6 room -- it's not obvious -- it's clear from the testimony that
7 the room had no cameras.

8 And if you were going to use it for the purposes that
9 he's charged with using it, if you were going to look for a
10 place rather to use it for the purpose that he's using it, then
11 it's obvious he would choose such a place.

12 MS. ARGENTIERI: I don't think that it is obvious,
13 Judge.

14 THE COURT: Well, I know --

15 MS. ARGENTIERI: I think they're going to argue that
16 he's a lieutenant. He is well regarded within the jail. And
17 that he wouldn't put his career on the line to do this because
18 it would be stupid.

19 THE COURT: That --

20 MS. ARGENTIERI: And he would get caught. I'm sorry,
21 Judge.

22 THE COURT: Well, he can make -- I'm sorry to
23 interrupt you.

24 MS. ARGENTIERI: And her -- Maria's credibility is
25 under such attack in this trial. And this is something that

1 directly -- that directly corroborates her to that point. The
2 fact that he used those cameras in that way and the fact that
3 he used that office for sexual activity. We can't get that
4 evidence from anywhere else.

5 And actually, Judge, how we found this witness is the
6 defendant emailed her and said you can't come now because the
7 cameras are down.

8 And so we also got permission from Judge Cogan to put
9 in that email which is the defendant's statement that that's
10 how he uses the cameras.

11 So I think we should be able to go put in his
12 statements through the email that that's how he uses the
13 cameras and elicit from this witness --

14 THE COURT: Could you tell me what that email says
15 again?

16 MS. ARGENTIERI: Sure, Judge. I can show it to you
17 if you don't mind.

18 And they're emailing about where they're going to get
19 together for sex. And he says I would have had you come, but
20 the cameras are down.

21 And she's going to say that was because he had
22 previously told me that he could monitor the hallways outside
23 the lieutenant's office.

24 And he couldn't that day because the system wasn't
25 working and so she wasn't going to go there and meet him for

1 sexual contact.

2 It's Government Exhibit 216, which is apparently
3 stapled, and it's an email string that goes from 6652 to 6655.

4 And, Judge, the other thing that I neglected to say
5 is that this is the exact time period in which he begins -- or
6 right before actually he begins raping Maria which is the
7 charged crime. It's November, 2015, mid-November.

8 THE COURT: Well, so what?

9 MS. ARGENTIERI: Because it shows how he was using
10 the office at that time period. I could see that if there was
11 some temporal distance, but at exactly the same time he's
12 committing the charged crime, he's using the office for sexual
13 activity with someone else and stating that that's how he's
14 using the cameras.

15 I think it's easier also to read the email string. I
16 don't want to tell you from the bottom up, Judge, so starting
17 from the last page forward. I'm sorry.

18 THE COURT: That's okay.

19 MS. ARGENTIERI: I only say that because I read it
20 from the top down and it was confusing.

21 THE COURT: I didn't know very much about Facebook
22 either.

23 (Pause.)

24 (Counsel conferring.)

25 THE COURT: I'm having trouble with this, following

1 this.

2 MS. ARGENTIERI: Do you want me to -- can I come up,
3 Judge?

4 THE COURT: Yeah. That's not how my computer works
5 with --

6 (Brief off the record.)

7 MR. RICCO: Judge, we had submitted a very
8 substantial opposition to this. And a part of it --

9 THE COURT: You all right?

10 MR. RICCO: No. I'm good. I'm okay, Judge.

11 THE COURT: All right?

12 MR. RICCO: No, I'm all right.

13 MS. ARGENTIERI: Are you sure?

14 MR. RICCO: No. It's just -- it's just, you know.

15 A part of it had to do with the nature of the
16 offense, that the offense charged here is the type of offense
17 that people do in the dark when there's opportunity. This is
18 not like stock fraud. Rape is committed outside of the purview
19 where it's an opportunistic crime.

20 And so the idea of pattern evidence, particularly
21 where it's prejudicial, a jury can walk away with this sense of
22 propensity, is dangerous in this case.

23 And we filed our motion before the 3500 material, and
24 I think it's even more so -- even more so it should be excluded
25 given the testimony that we have in this case and I would ask

1 the Court to keep it out under the gatekeeping function.

2 MS. ARGENTIERI: Judge, as Judge Cogan found, this is
3 an episode of consensual sex.

4 And there's nothing more prejudicial -- I couldn't
5 think of the word -- about it than the charged crime which is
6 rape. And honestly, Judge, the evidence of the defendant's
7 statements and being able to explain them is so important to
8 our case in corroborating Maria.

9 I mean, the people present during this rape were her
10 and the defendant. And the whole case really comes down to --
11 I think Mr. Ricco can -- he and I can agree on this -- is
12 whether the jurors believe Maria. Right? Because we don't we
13 know if the defendant's going to testify.

14 And it's important for the Government to be able to
15 corroborate her in every way that we can. And this is the
16 defendant's statement.

17 And it's a witness explaining the defendant's
18 statement and explaining the relationship that she had with him
19 the exact same time basically that he began raping Maria. And
20 there's just no substitute for that corroboration.

21 THE COURT: It corroborates her in what way? There's
22 no question that the room did not have cameras and that it had
23 a computer which let him know what was going on outside that
24 office.

25 MS. ARGENTIERI: It corroborates her as to the

1 opportunity and the fact that -- because I think most people it
2 would blow their mind that you could have sex in a federal
3 prison. It would literally blow their mind. They think
4 there's people coming and going. Who would have -- who would
5 have the opportunity to do that?

6 THE COURT: I understand, but that's all been --
7 that's all been explained by the evidence that you've already
8 introduced that I don't think is -- I don't think is
9 attackable.

10 You even brought this last witness in who basically
11 testified to the fact that there were no cameras, about the
12 computer, and how he brought the people down to the
13 lieutenant's office.

14 I mean, it seems to me that that establishes
15 opportunity and corroborates the fact. I mean, if you were
16 going to do this in the jail, you would do it in a place where
17 you're not likely to get caught.

18 MS. ARGENTIERI: But no one else has ever -- no one
19 else but Maria has said that he used the cameras for that
20 purpose. Not one person.

21 The last witness testified that he thought that
22 that's what the cameras had access to, but he didn't even have
23 access himself.

24 No one else is going to say yes, the defendant used
25 these cameras so that he could -- so that he could do something

1 he wasn't supposed to do in that room.

2 And honestly, Judge, I argue that the statements that
3 he made in this --

4 THE COURT: There were no cameras.

5 MS. ARGENTIERI: But the -- it's not just --

6 THE COURT: He wasn't using any cameras. There were
7 no cameras in the room.

8 MS. ARGENTIERI: But it's not just that there were no
9 cameras in the room.

10 What I'm speaking about is the fact that the computer
11 on the desk -- what the email references about the cameras
12 being down -- forget about the cameras in the room. Everyone
13 agrees there's no cameras in the room.

14 It's the computer on his desk that he draws up the
15 screens of all the hallways that enter the lieutenant's office
16 so that he knows that he has time if someone's coming to stop
17 what he's doing so he won't get caught.

18 THE COURT: Well, I think that could be brought in by
19 a stipulation.

20 MS. ARGENTIERI: But, Judge, I think that that --

21 THE COURT: That's not -- I don't I think that's --
22 that would be disputed.

23 MS. ARGENTIERI: I think it is disputed.

24 The fact -- I think the fact that there's a dispute
25 that we need this to prove is that he used the cameras for that

1 purpose.

2 Everyone will say that the cameras had access, but
3 there's no one else who will corroborate Maria that this
4 defendant used his computer access to look at those cameras to
5 protect himself from doing something he wasn't supposed to be
6 doing.

7 And honestly, Judge, I think his statement in that
8 email about the cameras is direct proof of the crime in this
9 case. It is a statement that is contemporaneous with the crime
10 happening or it shows that he is --

11 THE COURT: It's not direct proof.

12 MS. ARGENTIERI: But it's proof of his use of those
13 cameras.

14 THE COURT: Read it to me again. Just that -- don't
15 read the whole thing.

16 MS. ARGENTIERI: No. No.

17 "I was going to have you come this morning here"
18 -- I'm sorry.

19 "I was going to have you come this morning here,
20 but video system on computer is down. Like I was
21 going to -- I was going to have you come here to have
22 sex with me, but I'm not going to because the video
23 system on the computer is down."

24 We don't have that from any other witness and I think
25 that is direct proof of the charged crime in this case.

1 This is like a couple of weeks before he rapes Maria.
2 And it shows --

3 THE COURT: I don't want to get into the differences
4 between direct and circumstantial evidence. That's all my
5 academic background. I don't think it's -- it's circumstantial
6 evidence.

7 (Pause.)

8 THE COURT: I'm just quickly writing down what I
9 think might be a way to get that limited point in without
10 everything that you said.

11 And this is -- even though I jotted notes down, it's
12 in the nature of thinking out loud, so something like did you
13 and the defendant have a consensual sexual relationship? The
14 answer would be yes.

15 And at one time was it suggested that you would meet
16 in his office or at a particular time? And he responded in an
17 email and it would have the words that you just read to me.

18 MS. ARGENTIERI: But you wouldn't let me get into the
19 fact that they actually met in the office?

20 THE COURT: I don't know what -- I am not persuaded
21 that that -- I have general questions about this which is why
22 I'm -- when I first read this, I wasn't overwhelmed. But as I
23 told you, I think Judge Cogan is smarter than I am.

24 But I also told you that I don't like in limine
25 rulings because they come before a judge has a full

1 understanding of the nature of the case. This you said was the
2 most important to you. I think that what I've -- in substance
3 what I've read takes care of that.

4 Now you still have your objection, obviously. I'm
5 willing to hear you carry on if you want to.

6 MS. ARGENTIERI: That's fine, Judge. I would ask
7 that we could also get into the fact that she went there and
8 that when she got there she had the screens open.

9 THE COURT: He had the what open?

10 MS. ARGENTIERI: When she went there to meet him for
11 the purpose of sexual activity, he had all the video screens
12 open on the computer like he did use it for that purpose.

13 THE COURT: Well, that's basically what this would
14 clearly imply. I mean, I don't know what's -- look, I'm going
15 to have to -- do you -- you can listen to this what I've
16 proposed.

17 MS. ARGENTIERI: Okay.

18 THE COURT: And if you want to get another witness in
19 here, I could get -- I'm willing to work today until 6 o'clock.
20 But as I told you, I have to break to perform a wedding, which
21 I'm going to perform at 4:15. I'm willing to let -- to let you
22 get that in that he's --

23 MS. ARGENTIERI: With the email?

24 THE COURT: Yeah. Not the whole email, but the part
25 that you said was the most important to you, which is we can't

1 in substance -- we can't do it today because the cameras are
2 not -- or the computer is not working.

3 The part that you said that was the most important to
4 you in that chain email, which is I'm ready to let it in, and
5 you could ask -- as I said, as the introduction -- you could
6 say did you and the defendant have a consensual sexual
7 relationship?

8 And at a particular point -- you could even use the
9 date if it's there -- was it -- it was suggested that this
10 sexual activity could take place in his office, and he wrote
11 back whatever he wrote back and what you read to me.

12 MS. ARGENTIERI: Okay. I mean -- so can I say what
13 did the defendant tell you about why he wanted to meet you in
14 the lieutenant's office because the camera -- he could monitor
15 people coming in and out?

16 THE COURT: Yes.

17 MS. ARGENTIERI: And did he send you an email that
18 said that? And then say the email?

19 THE COURT: Yes.

20 MS. ARGENTIERI: But you don't want me to ask did
21 you, in fact, do that?

22 THE COURT: Did you, in fact, do what? Not come?

23 MS. ARGENTIERI: Did you, in fact, meet him in the
24 lieutenant's office for the purpose of sexual activity?

25 THE COURT: I don't see that -- I'm not overwhelmed

1 by the relevance of that.

2 MS. ARGENTIERI: I mean, Judge, the other thing about
3 it is the manner in which he did it.

4 I mean, Maria -- I take your point about that and I
5 can ask those limited questions, but it's also very distinctive
6 if he didn't take his pants off, that he left them on.

7 I mean, that's not -- it's not -- there was no one
8 else there. Again, I -- and her credibility is such under
9 attack. She's been called a criminal, an opportunist, a
10 manipulator.

11 Here we have a witness who had sexual contact with
12 the defendant at exactly the same time saying that he did --

13 THE COURT: I know. But there's an element of what I
14 would call prejudicial confusion.

15 MS. ARGENTIERI: Just from the fact that he had
16 consensual sex with another person? Not an inmate? They're so
17 different in my mind, Judge.

18 THE COURT: I don't know what you mean by there's no
19 difference in your mind.

20 MS. ARGENTIERI: Well --

21 THE COURT: This person is describing Judge Cogan's
22 email as an employee.

23 MS. ARGENTIERI: She's another person who worked at
24 the jail. I would understand that it would be prejudicial if
25 it were another inmate, that I would understand.

1 But it's another person who willingly consented to
2 this relationship and I don't -- and I don't see how that's
3 more prejudicial than the other evidence that's come in or the
4 --

5 THE COURT: And I don't see what -- you know, I'm
6 concerned about the relevance of this.

7 What he did in a consensual relationship may or may
8 not be different from what he did with her -- with the victim.

9 And I just don't see -- I mean, this is -- this is a
10 kind of propensity evidence and I'm just troubled by it. I'm
11 willing to let it in for the -- I'm willing to let her testify
12 to the --

13 MS. ARGENTIERI: Okay.

14 THE COURT: -- for the purpose for which it was used.

15 MS. ARGENTIERI: Okay. We can call her, Judge.

16 (Pause.)

17 MS. ARGENTIERI: Judge, can I just tell the witness
18 not to blurt anything else out?

19 THE COURT: Well, if Mr. Ricco has no objection --

20 MS. ARGENTIERI: I was just going to --

21 THE COURT: -- I'll let you lead her.

22 MR. RICCO: And I have no objection, Judge.

23 THE COURT: Bring in the jury.

24 (Pause.)

25 THE CLERK: All rise.

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1 (Jury enters.)

2 THE CLERK: Please be seated.

3 NICOLE PAPPADIO, GOVERNMENT'S WITNESS, SWORN

4 MS. ARGENTIERI: May I, Judge?

5 THE COURT: Yes.

6 DIRECT EXAMINATION

7 BY MS. ARGENTIERI:

8 Q Good afternoon.

9 A Good afternoon.

10 Q Can you say and state your name for the record.

11 A Nicole Pappadio, P-A-P-P-A-D-I-O.

12 Q Just a couple of questions. Okay. Did you and the
13 defendant have a consensual sexual relationship?

14 A Yes.

15 Q Let me ask you first, who is Carlos Martinez?

16 A A lieutenant at MDC Brooklyn.

17 Q Looking around the courtroom, do you see him here today?

18 A Yes.

19 Q Can you identify him by an article of clothing?

20 A Blue suit.

21 Q And how do you know the defendant?

22 A We worked together at MDC Brooklyn.

23 Q So you worked at MDC Brooklyn?

24 A Correct.

25 Q And what was his position there?

Direct - Pappadio - Argentieri

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1 A Lieutenant.

2 Q And over what time period did you work there?

3 A November 2014, up until the present.

4 Q Did you and the defendant have a consensual sexual
5 relationship?

6 A Yes.

7 Q And did that occur in approximately November, 2015?

8 A I believe so.

9 Q Now directing your attention to November of 2015, was
10 there a suggestion that sexual activity take place between you
11 and the defendant in the lieutenant's office on the second
12 floor of the Metropolitan Detention Center?

13 A Yes.

14 Q Who suggested it?

15 A The defendant.

16 Q What did he tell you about why he wanted to meet you
17 there?

18 A Because of the camera system that he had access to.

19 Q What do you mean by that?

20 A He would be able to watch who was coming and going on the
21 floor.

22 Q And on what could he watch it?

23 A The computer monitors.

24 Q Where was the computer monitor?

25 A On the desk in the lieutenant's office.

Direct - Pappadio - Argentieri

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1 Q During that time frame, did he send you an email to that
2 effect?

3 A Yes.

4 Q I'm showing just the witness Government Exhibit -- it will
5 be marked Government Exhibit 216 -- can you just review it from
6 the bottom up. Are you familiar with this email?

7 A Yes.

8 Q Is it an email between you and the defendant?

9 A Yes.

10 MS. ARGENTIERI: Judge, I move to admit it?

11 THE COURT: It's admitted.

12 MR. RICCO: No objection. I'm sorry, Your Honor.

13 THE COURT: Okay.

14 (Government Exhibit 216 received into evidence.)

15 MS. ARGENTIERI: May I publish?

16 THE COURT: Yes.

17 MR. RICCO: The number again was 216?

18 MS. ARGENTIERI: Yes.

19 MR. RICCO: Thank you.

20 BY MS. ARGENTIERI:

21 Q Now at the bottom, November 18th, 2015, 7:22 a.m., the
22 defendant said I was going to have you come this morning here,
23 but the video system on the computer system is down. What was
24 your understanding of what the defendant meant?

25 A That the video cameras weren't working in that area and he

Direct-Pappadio-Argentieri/Cross-Pappdio-Ricco

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1 would not be able to watch the videos.

2 Q So he wasn't going to have you come meet him?

3 A Correct.

4 Q And when he sent you this email, were you at work?

5 A Yes.

6 Q And was he at work?

7 A Yes.

8 Q And then you answered that's a shame, could have
9 definitely used it?

10 A Correct.

11 Q No further questions.

12 CROSS EXAMINATION

13 BY MR. RICCO:

14 Q Good afternoon.

15 A Good afternoon.

16 Q I take it that you are over 21 years of age?

17 A Correct.

18 Q And you were involved in a consensual situation with Lt.
19 Martinez?

20 A Correct.

21 Q And you also was at his apartment --

22 A Correct.

23 Q -- several times, isn't that correct?

24 A Yes.

25 Q I have no further questions. Thank you very much.

1 THE COURT: Okay. You can step down.

2 MS. ARGENTIERI: Judge, before she steps down, can we
3 approach?

4 THE COURT: Sure.

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1 (Discussion at sidebar.)

2 MS. ARGENTIERI: Hi.

3 THE COURT: I'm glad you're still talking to me.

4 MS. ARGENTIERI: So I think Mr. Ricco just suggested
5 that they met at his apartment, which they did, but they also
6 met within the MDC, so hasn't he opened the door to me getting
7 in that they also met in the MDC? He's making it sound like
8 that's the only place they met.

9 THE COURT: Okay.

10 MS. ARGENTIERI: Yeah?

11 THE COURT: Yeah.

12 MS. ARGENTIERI: Okay. Thank you.

13 (End of sidebar discussion.)

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Redirect - Pappadio - Argentieri

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1 REDIRECT EXAMINATION

2 BY MS. ARGENTIERI:

3 Q Just a few more questions. Did you meet the defendant in
4 the lieutenant's office for the purpose of having sexual
5 contact?

6 A Yes.

7 Q Whose idea was it?

8 A His.

9 Q When you went there, what was he doing?

10 A Sitting behind the lieutenant's desk.

11 Q And what, if anything, did he have up on the computer?

12 A The video camera system for the floor.

13 Q And then what happened?

14 MR. RICCO: Objection.

15 THE COURT: It seems to me we're going beyond what
16 you just said.

17 MS. ARGENTIERI: Understood, Judge.

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Recross - Pappadio - Ricco

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1 THE COURT: Okay.

2 MS. ARGENTIERI: Okay. No further questions.

3 MR. RICCO: I just have just to be clear.

4 RECROSS EXAMINATION

5 BY MR. RICCO:

6 Q When I said met, I meant that the two of you got together?

7 THE COURT: You can just --

8 BY MR. RICCO:

9 Q Yeah. When I said met, the question that you got together
10 and you had sexual contact with each other?

11 A Okay.

12 Q At his apartment, right?

13 A Yes.

14 Q And the two of you also had sexual contact at the job?

15 A Correct.

16 MR. RICCO: No further questions. Thank you, Your
17 Honor.

18 MS. ARGENTIERI: No further questions.

19 THE COURT: Okay. Thank you. You can step down.

20 (Witness excused.)

21 MS. ARGENTIERI: Judge, is there any way we could
22 break now? Our next witness is going to be a little bit
23 longer.

24 THE COURT: And that would be your last witness for
25 the day?

1 MS. ARGENTIERI: Yes.

2 THE COURT: How many witnesses do you have after
3 this?

4 MS. ARGENTIERI: Just one, but it's not going to take
5 just a minute.

6 THE COURT: No. No. There's this witness and one
7 other?

8 MS. ARGENTIERI: Just this witness.

9 THE COURT: That will be your last witness?

10 MS. ARGENTIERI: Yeah.

11 MS. SHIHATA: No. No. For today.

12 MS. ARGENTIERI: For today.

13 MS. SHIHATA: We have one more witness.

14 MS. ARGENTIERI: I misunderstood you. We have
15 actually two more witnesses left in our case.

16 THE COURT: Okay.

17 MS. ARGENTIERI: So we have one more here today.

18 THE COURT: Okay. And how long do we figure this
19 will take?

20 MS. ARGENTIERI: I think it would be approximately --
21 you know I'm bad at estimates -- but I would say approximately
22 a half an hour on direct.

23 THE COURT: Okay. For each one?

24 MS. ARGENTIERI: There's only one witness left.

25 THE COURT: I'm confused. You want to break for the

1 day?

2 MS. ARGENTIERI: No.

3 MS. SHIHATA: No.

4 THE COURT: I don't understand. Okay.

5 Ladies and gentlemen, I didn't understand.

6 MR. RICCO: Judge, before you announce it, just one

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1 (Discussion at sidebar.)

2 MR. RICCO: Judge. I'm sorry. I don't know if I
3 should speak. Judge, given who the witness is --

4 THE COURT: Who is it?

5 MS. ARGENTIERI: It's Veronica Metzger.

6 MR. RICCO: Right. And she's a CO.

7 MS. ARGENTIERI: She's a lieutenant at the MDC.

8 MR. RICCO: Lieutenant, yeah.

9 THE COURT: And the substance of what she's going to
10 say today?

11 MS. ARGENTIERI: She's the African-American
12 lieutenant who Maria described left the cleaning supplies. She
13 was particular about the cleaning supplies and she locked them
14 in the room and she's going to testify generally about duties
15 and responsibilities lieutenant, the disciplinary procedure.

16 THE COURT: Okay.

17 MR. RICCO: Judge, I would request that we break for
18 today because we're not going to get her in today, you know.
19 They're being very generous, but I know I have a lot of cross
20 of her.

21 THE COURT: Well, I have to break now.

22 MR. RICCO: Right.

23 THE COURT: So I would -- you know, if I perform the
24 wedding at 4:15 and I would stay for -- I brought a bottle of
25 champagne so I might stay for a toast, but we'd be back at

1 about 4:30.

2 MR. RICCO: A very small bottle of champagne?

3 THE COURT: Well, I mean, you know, if it wasn't for
4 this trial, I might stay longer. But it's --

5 MR. RICCO: Judge, I think we got a lot done today.

6 THE COURT: Now look, you're tired.

7 MR. RICCO: I'm tired, Judge.

8 THE COURT: And you want me to break --

9 MR. RICCO: I'm tired.

10 THE COURT: -- just tell me.

11 MR. RICCO: I'm tired, Judge.

12 THE COURT: Okay.

13 MS. ARGENTIERI: He wants you to have that champagne,
14 Judge.

15 MR. RICCO: I want you to do that too, but I am
16 tired.

17 THE COURT: Okay.

18 MR. RICCO: Otherwise, you know, I would stay.

19 THE COURT: Okay.

20 MR. RICCO: Thank you, Judge.

21 (End of sidebar discussion.)

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1 THE COURT: Okay, ladies and gentlemen.

2 I said I might be wrong on whether we finish all the
3 testimony today. There are two more witnesses. We'll get them
4 done on Tuesday morning.

5 Monday is Martin Luther King's birthday and it's a
6 holiday, so we're going to ask you to come back Tuesday at
7 10:00.

8 Hopefully, the rest of the schedule will be in place
9 after those two witnesses. There may be another witness. I
10 don't know.

11 But after we finish taking testimony, there'll be
12 summations and my instructions on the law. So I don't like to
13 make promises about time because I know that I can't always
14 keep them.

15 But I thank you for -- I see all of you have been
16 paying close attention. Many of you are taking notes and
17 that's good. And I'll give you some instructions about the
18 notes. And as long as I'm doing it, it's perfectly okay to
19 take it. The purpose of the notes is to refresh your
20 recollection. But you're not the court reporters.

21 And so if there's any question really, if anything of
22 importance comes up and there's any question in your mind, as I
23 told you, all of the evidence is recorded. It's been recorded
24 on a machine and it's been transcribed.

25 So you'll just have -- you can just say could you

1 send me the transcript of whatever it is that you're -- that
2 you want and I think we could get it into you relatively
3 quickly.

4 So it's perfectly okay to take notes so you remember
5 what's important to you. But if in your deliberations you have
6 some question about the evidence, the place where it is -- the
7 transcript and whatever exhibits that have been marked in
8 evidence, you can ask me for it and they can be sent into the
9 jury room.

10 So thank you again for your attention and have a nice
11 weekend.

12 THE CLERK: All rise.

13 (Jury exits.)

14 THE COURT: I'm going to -- I'm going to ask her to
15 email you a copy of the instructions.

16 MR. RICCO: That will be fine, Judge.

17 THE COURT: I call it my law clerk's draft.

18 MS. ARGENTIERI: Okay.

19 THE COURT: My law clerk's. You know, three quarters
20 of the instructions I'm told are boilerplate and I have my law
21 clerk put together the original draft with the most important
22 part being the middle part.

23 But because I'm anxious to get it to you and because
24 I've been working all day and I'm tired at night, I haven't
25 really had a chance to go over it. But it will be easier when

1 we go over it. And I actually have found that there have been
2 very few objections to my law clerk's draft.

3 MS. ARGENTIERI: Okay. Sounds good. Have a good
4 weekend.

5 MR. RICCO: All right. Thank you, Judge.

6 MS. ARGENTIERI: Good luck with the wedding.

7 (Proceedings adjourned at 4:10 p.m.)
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1 I, LINDA FERRARA, Certified Electronic Transcriber,
2 certify that the foregoing is a correct transcript from the
3 official electronic sound recording of the proceedings in the
4 above-entitled matter.

5
6 

7 _____ January 12, 2018

8 Linda Ferrara, CET-656
9
10

11 I, CHRISTINE FIORE, Certified Electronic Court Reporter
12 and Transcriber, certify that the foregoing is a correct
13 transcript from the official electronic sound recording of the
14 proceedings in the above-entitled matter.

15
16 

17 _____ January 12, 2018

18 Christine Fiore, CERT-410
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